

THE  
LAW  
CONCERNING  
ELECTION  
. O F

Members for Scotland,  
To Sit and Vote in the  
Parliament of Great-Britain.

S H E W I N G  
The ORDER, and what is necessary to  
be Observed in ELECTING the  
PEERS, and COMMISSION-  
ERS for Shires and Burghs,

The DUTY of the Officers concern'd in Re-  
turning the Summons of Parliament, with  
other Matters relating to Members of Par-  
liament, according to the Statutes and  
Laws in the North and South Parts of this  
United Kingdom.

Together with  
The Privilege belonging to Parliament-Men,

publish'd for the Use of these concern'd in the  
Elections for Scotland.

The Second EDITION Corrected and Augmented  
with several Acts and Statutes relative to Elections,  
by JOHN SPOTISWOOD of That-Ilk, Advocate.

Edinburgh, Printed by William Brown and Company,  
and sold at his Shop in the Parliament-Closs. 1722.



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# THE PREFACE.



HIS Dissertation I present you with, being the first Essay of this Kind, was occasionally communicated to some Friends, who were of Opinion, It ought not to be confin'd to private Students; seeing they

thought it would be useful, to the Peers, Free-holders, and others concern'd in making Election of Members to the Parliament, who from it might receive Knowledge of their Power and Duty in this Behalf. Wherefore, in Compliance, I have revis'd and fitted it for the Publick, wishing it may answer the End; and more especially that it may be serviceable to the Honourable, The House of Commons, in determining the controverted Elections of the Members for North-Britain;

which

## The P R E F A C E.

which I hope it will, because nothing of the Laws and Customs of Scotland concerning Elections, has hitherto been digested and published, and is now necessary, when by Stat. 5. Anne 8. it is declared, That none can elect, or be elected a Representative for any Shire or Burgh in Scotland to the Parliament of Great-Britain, except such as are capable by the Laws of Scotland.

I have inserted much of the Law of England concerning Elections, upon account of its Affinity with our Law; and because, in Cases of this sort, not defin'd by our own Customs, we may expect to be judged thereby. Intending also, That our Countrymen should here get a Glance of the Law of England; which I doubt not but will be agreeable.

I have given an Explication of a few English Terms of Law, and for others the Reader may consult at his own Leisure the English Law Lexicon.

To distinguish the Citations of the several Laws, please know, That these marked thus, Stat. 6. An. 8. and Stat. 7. Hen. VI. 15. and the like, are English; and signify, The Eighth Statute made in the Sixth Year of the Reign of Queen Anne; and the Statute made in the Seventh Year of the Reign of King Henry the Sixth, Chapter Fifteenth, or Statute Fifteenth. For in England, the Parliaments are marked by the Number of the Year of the Reign of the Queen or

King

## The P R E F A C E.

King. *The Laws of Scotland are cited by the Number of the Acts, the Number of the Parliament and Session thereof, holden by a particular King or Queen ; as, Act 114. Parl. 11. James VI. Or, Act 5. Parl. 1. Sess. 2. Charles II.* To these I sometimes add the Year of GOD, that the Time when the Law was enacted and introduc'd may be known.

Tho' by the Laws of Scotland before the Union, all the Electors present at the Meeting behov'd to sign the Commission to their Representative, as is set down Page 70. But since the Union, an Indenture between the Freeholders, the Clerk of the Meeting, and the Sheriff of the Shire, according to the Custom of England, has come in Place of this Commission ; and this Indenture must bear, That the Person therein-nam'd was, by the Plurality of Freeholders, elected and chosen, and is sign'd by Seven or Eight of the Voters, or so many as please, but needs not be signed by all the Electors.

The First Edition of this Treatise being sold off, the Book-seller demanded a Second, which is here given, with Addition of all Statutes made concerning Elections since November 1710.

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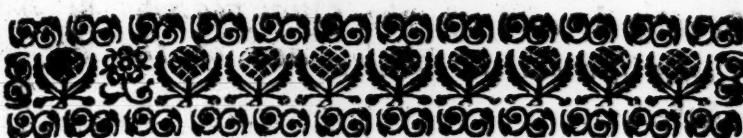
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# The LAW, concerning the Election of Members for *Scotland*, to Sit and Vote in the Parliament of Great-Britain.

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## TITLE I.

### *Of the Parliament, in general.*

**T**H E Parliament being dissolved,  
(which is done by the Sovereign,  
either at Rising of the Parliament,  
in the Intervals thereof, by a Proclama-  
tion) none but the King, or Queen, at the  
time, hath Authority to summon a Parlia-  
ment; except that, in the King's Absence  
of the Realm, the *Custos Regni*, or the  
*wards Justices* in the King's Name, and, dur-  
ing His Minority, the *Protector Regni* or *Re-  
gent*

gent doth summon a Parliament, which cannot begin without the King's Presence, either in Person, or by Representation in Commission.

By the Laws, as well of *England* as of *Scotland*, the Parliament in being, at the Time of the Demise or Death of the Sovereign, was through the said Decease *ipso jure* dissolved, till by *Stat. 7 and 8. W. III. 15.* in *England*, and by *Act 17. Parl. 1. Sess: 6. W. III. Anno 1696.* in *Scotland*, but more effectually, since the Union of the Two Kingdoms, by a Statute in the sixth Year of the Reign of Her late Majesty Queen *Ann*, it is Enacted, That the Parliament, in being at the Time, shall not be dissolved by the Death of Her Majesty, and if sitting at such Death, is impowered to act for six Months, unless prorogued or dissolved by the Person to whom the Crown of *Great-Britain* shall come; and, if the Parliament is at the Time prorogued, it shall meet on the Day to which it is prorogued, and shall continue the Residue of the six Months, unless sooner prorogued or dissolved.

If the Parliament in being happens, at the Time of the Death of Her Majesty, to be separated; it shall immediately meet, and act for six Months, unless sooner dissolved.

If there is no Parliament in being, the last immediate Parliament shall conveen and

fit at *Westminster*, continue as aforesaid, and act as if the same had never been dissolved, but subject to be prorogued or dissolved, as said is.

The Lords Justices of *Great Britain* (appointed by the same Stat. 6. Ann. 7. for continuing the Administration of the Government, in the Name of the Protestant Successor, in his Absence out of this Realm, and till his Arrival in to Britain) are prohibited to dissolve the Parliament, ordered to be assembled as said is, without express Direction from the Successor; and are thereby disabled to give the Royal Assent to any Bill for repealing or altering. 13. and 14. Ch. II. 4. for Uniformity of publick Prayers: Or the Act made in Scotland Anno 1707, for securing the Protestant Religion, and Presbyterian Church-Government. And every the Lords Justices, concurring in giving the Royal Assent to such Bill, are declared guilty of High Treason.

By the same Statute, it is provided, That, before the Successor arrive in *Great Britain*, the Lords Justices shall call a Parliament, by Writs tested in their Names, the same shall not be dissolved by the Arrival of the Successor, but shall proceed without new summons.

By St. 4. (a) E. III. 14. A Parliament is  
A 2 ordain-

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(1) Anno Dom. 1330

ordained to be holden once a Year, and oftener if Need be.

By St. 36. (a) E. III. 10. A Parliament was to be holden every Year.

By St. 16. (b) C. II. 1. The sitting, and holding of Parliaments, is not to be intermitted or discontinued above three Years.

By the Claim of Right for *Scotland*, it is declared, That for Redress of all Grievances, and for amending, strengthning and preserving of the Laws, Parliaments ought to be frequently called, and allowed to sit, and the Freedom of Speech and Debate secured to the Members.

By St. 6. (c) W. and M. 2. It is enacted, That from thenceforth a Parliament shall be holden once in three Years at the least; and within three Years after the Dissolution of that Parliament, and so of every other Parliament thereafter, legal Writs under the Great Seal are ordained to be issued forth for calling, assembling, and holding another new Parliament. And further, it is statuted, That from thenceforth no Parliament whatsoever shall have any Continuance longer than for three Years only, at the farthest, to be accounted from the Day on which by the Writs they are appointed to meet,

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(a) *Anno Dom. 1362.*

(b) ————— 1665

(c) ————— 1695

But by Stat. 1. *Georg.* cap. 38. reciting the above Act. It is declared, That it hath been found by Experience, that the said Clause has proved very grievous and burdensome, by occasioning greater Expences in Order to Election of Members, and more violent and lasting Heats and Animosities among the Subjects, than were ever known before the said Clause was enacted; and if the said Provisions should continue, it might probably at this Juncture, when a restless and popish Faction are endeavouring to renew the Rebellion within this Kingdom, and an Invasion from Abroad be destructive to the Peace and Security of the Government: Therefore enacted, That this present Parliament, and all Parliaments that shall hereafter be called, assembled or held, shall have Continuance for seven Years and no longer, to be computed from the Day on which, by the Writ of Summons, this present Parliament hath been, or any future Parliament shall be appointed to meet, unless this present, or any such Parliament hereafter to be summon'd, shall be sooner dissolved by His Majesty,

The King or Queen, resolving to have a Parliament, doth, out of the Court of Chancery, send Writs of Summons; at the least, fifty Days before the Parliament begin: Every Lord of Parliament, either Spiritual, as

Arch Bishops and Bishops, or Temporal, as Dukes, Marqueses, Earls, Viscounts and Barons, Peers of the Realm, and Lords of Parliament ought to have several Writs of Summons.

All the Judges of the Realm, Barons of the Exchequer, of the Coif, the King's learned Council and the Civilians, Masters of the Chancery, are called to give their Assistance and Attendance in the upper House of Parliament; but they have no Voices in Parliament, and their Writs to them differ from the Writs to the Barons. For their Writs are, *Quod intersitis nobiscum et cum ceteris de Concilio nostro,* (and sometimes *nobiscum* only,) *Juper præmissis tractaturi, vestrumq; Concilium impensuri.*

And in every Writ of Summons to the Bishops, there is a Clause requiring them to summon the following Persons to appear personally at the Parliament, in these Words, *Præmonentes Decanum & Capitulum Ecclesie vestrae Norwicensis, ac Archidiaconos, totumque Clerum vestrae Dioceos, quod idem Decani & Archidiaconi, in propriis personis suis, ac dictum Capitulum, per unum, idemque Clerus per duos Procuratores idoneos, plenam & sufficientem potestatem ab ipsis Capitulo & Clero divisis habentes, predicti die & loco personaliter interfint; ad consentiendum his quæ tunc ibidem, de communi consilio dicti Regni nostri, divina favente*

*lavente clementia contigerit ordinari.* And the Bishop, under his Seal, makes Certificate accordingly, and these are called *Procuratores Clericorum*, and many Times have appeared in Parliament, as spiritual Assistants, to consider, consult and concert *ut supra*, but had never Voices there, because they were no Lords of Parliament.

Other Writs are sent to the Sheriffs of each County, to summon the People to elect Knights for each County, Citizens and Burgeesses for each City and Burgh, according to the Laws and Custom.

By Statute 7. (a) Hen. IV. 15. the Election of the Knights of the Shires is ordered thus: At the next County, after the Delivery of the Writ, Proclamation is to be made in full County of the Day and Place of the Parliament; and that all there present, as well Suitors summoned as otherways, shall attend to the Election of the said Knights, and then, in a full County, a free and an indifferent Election shall be made, notwithstanding any Respect or Command to the Contrary (b).

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After

(a) Anno Dom. 1406

(b) The Occasion of the last Clause was this, In the Year 1404, which was the 6th Year of the Reign of Henry IV. this King, by special Letters directed for that End, brought about, That no Lawyer should be returned Knight or Burges to serve

After such Choice, the Names of the Parties so elected, (be they present or absent) is ordained to be written in an Indenture, under the Seals of all them that did chuse them, which Indenture, so sealed and tacked to the said Writ, is to be the Sheriff's Return thereof, touching the Knights of the Shires; and in such Writs this Clause shall be put, *Et Electionem tuam, in pleno Comitatu tuo factam, distinete & aperte, sub sigillo tuo, & sigillis eorum qui Electioni illi interfuerunt; Nobis, in Cancellaria nostra, ad diem & locum brevi contentum certifices indilat.*

The Sheriff, after the Receipt of the Writ, is order'd to deliver a Precept, under his Seal,

serve in the Parliament then called; and that upon Pretence of an Ordinance in the House of Lords, in 46 Edward III. but at the next Parliament holden in the Year following, when the said Statute 15. was made, upon Complaint of the Commons, who were by these Letters interrupted in their free Elections it was enacted, That Elections should be freely and indifferently made, notwithstanding of any Prayer or Commandment to the contrary, i. e. *sine prece*, without any Prayer or Gift; and *sine praecepto*, without Commandment of the King by Writ, or otherwise; or of any other: And my Lord Justice Coke says, It was but an A& declaratory of the Ancient Laws and Custom of Parliament, and to ascertain the Liberty of the Subject.

By the Claim of Right for England, Stat. 1. W. and M. Sect. 2. s. it is declar'd, That the Election of Members of Parliament ought to be free.

Part of every Major, and Bailiff or Bailiffs, or Bailiff  
 (t) is where no Major is, of the Cities or Boroughs  
 under within his County, reciting the Writ, and  
 them commanding them, if it be a City, to chuse  
 to the Citizens of the same City ; and, if a Bo-  
 therough, to chuse Burgesse to come to the Par-  
 and ment : And such Head-Officers are lawful-  
 El E- to return such Precepts to the same Sheriffs,  
 Etam, by Indentures betwixt them, of such Electi-  
 is e- ons, and the Names of the Citizens and Bur-  
 is, in gesse so chosen ; and thereupon the Sheriff is  
 con- to make a good Return of every such Writ,  
 and also of every such Return made by the  
 Writ, said Head-Officers.

Seal. In these Elections anciently all the People of  
 England had their Votes, till it was enacted  
 by Henry VI. in the Year 1430, That none  
 should have Suffrage in Election of Knights of  
 the Shire, but such as, being Freeholders, did  
 reside in the County, and had yearly Forty  
 shillings (which, till the Discovery of the  
 Gold and Silver in America, was more than  
 Ten Pound is now.) Whence it came to pass,  
 that the Lay-Commons were then elected as  
 the Clergy-Commons (the *Procuratores Cleri*)  
 were, and ever have been, viz. *sine prece, sine  
 retio, sine peculo, &c.* yet there was then, as  
 now, this Defect or Absurdity, That where-  
 all Englishmen, who have considerable E-  
 states, ought not to be Taxed, without their  
 own Consent in Parliament, by themselves or  
 their

their Representatives ; yet Copy-holders in  
*England* (whereof there are some who have  
1000 Lib. a Year) have no Voice in the Elec-  
tion of Knights of the Shire.

Thus much relating to *South-Britain*, and  
peculiar to *England*, I thought fit to premise  
as expedient to make what follows to be bet-  
ter understood.



## TITLE II.

*Of the Order, and of what is necessary to be  
observ'd, in Electing the Peers for Scotland,  
to Sit and Vote in the House of  
Peers of the Parliament of Great  
Britain.*

**B**Y the Third Article of the Union of *England* with *Scotland*, it is agreed  
That the United Kingdom of *Great Britain* shall be represented by one and the  
same Parliament, to be Stiled, *The Parliament of Great Britain*.

And by the Twenty second Article it is ap-  
pointed, That of the Peers of *Scotland*, at the Time of the Union, Sixteen shall be the Num-  
ber to sit and vote in the House of Lords in the Parliament of *Great Britain* : And that

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when Her Majesty shall declare Her Pleasure  
 holding the First Parliament of *Great Britain*, until the Parliament of *Great Britain* shall  
 make further Provision therein, a Writ is to  
 issue under the Great Seal of the United  
 Kingdom, directed to the Privy Council of  
*Scotland*, commanding them to cause Sixteen  
 Peers, who are to sit in the House of Lords,  
 to be summoned to Parliament, in manner  
 settled by Act of Parliament in *Scotland*, of the  
 26th February 1707; and is thus: The said  
 Sixteen Peers are ordain'd to be nam'd by the  
 other Peers, whom they are to represent, and  
 their Heirs and Successors to their Digni-  
 ties and their Honours, *out of their own Num-*  
 ber (a) and that by open Election, and Plura-  
 lity of Voices of the Peers present, and of the  
 Proxies of such as shall be absent; the saids  
 Proxies being Peers, and producing a *Mandate*  
*Writing*, duly signed before *Witnesses*. (b),  
 and

(a) By a Resolve in the House of Peers, *January*  
 26th, 1709, a Peer of *Great-Britain* is not allow'd to  
 vote. (b) The House of Peers, *January* 26th 1709,  
 declared, That a Proxy of a Peer of *Scotland*, to vote  
 at such Election, is not valid, without subscribing  
*Witnesses*; and upon the 29th of the same Month it  
 is resolved, That a Proxy of a Peer to vote at such  
 election is valid, altho' the Writer's Name be not  
 sign'd therein: And that a Proxy sign'd at *West-*  
*minster* before *Witnesses*, but not seal'd, nor on stam-  
 p'd Parchment, was a good Proxy at the Election of  
 the Sixteen Peers, who are to represent the Peers of  
*Scotland* in Parliament.

and both the Constituent and Proxy being qualified according to Law : Declaring all That such Peers as are absent, being qualified, as aforesaid, may send to all such Meetings, Lists of the Peers which they judge fit, validly signed (c) by the said absent Peers, which shall be reckoned in the same Manner, as the Parties had been present, and given in the said List. And, in case of the Death or legal Incapacity of any of the said Sixteen Peers, that the foresaid Peers of Scotland shall nominate another of their own Number in his Place, and the Writ to have been directed to the Privy Council of Scotland, until the Parliament of Great Britain made further Provision therein, was to have contained a Warrant at the Command to issue out a Proclamation in Her Majesty's Name, requiring the Peers for the Time to meet and assemble at such Time and Place within Scotland, as Her Majesty and Her Royal Successors should think fit, to make Election of the said Sixteen Peers, requiring the Clerk-Register, or Two of the Clerks of Session, to attend all such Meeting.

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(c) January 29th, 1709, Resolved, That a List given in at such Elections is not valid without subscribing Witnesses; but is valid without the Writing of the Name designed in the Body of the Instrument; and that a Power to give in a List, being signed and sealed before Witnesses, is valid without the Writing of the Name and Designation.

being called to administer the Oaths that are, or shall be by Law required, and to ask the Voices: and having made up the Lists, in Presence of the Meeting, to return the Names of the Sixteen Peers chosen, certified under the Subscription of the said Clerk-Register, Clerk or Clerks Session attending, to the Clerk of the Privy Council of Scotland, who again was to return the same to the Court, from whence the Writs issue, under the Great Seal of the United Kingdom.

But seeing by an Act of the First British Parliament, in the 6th Year of Her Majesty's Reign, Intituled, *An Act for rendering the Union of the Two Kingdoms more intire and compleat*; is Enacted, That, after the first of May 1708, the Queen's Majesty and Her Successors shall have but one Privy Council for Great Britain, which shall have the same Powers as the Privy Council of England had at the Time of the Union, and none other; whereby the Council of Scotland, as before the Union, is at an End, and extinguished: So that, pursuant to the Faculty reserved to the Parliament of Great Britain, in the said 22d Article of the Treaty of Union, some farther Provision being made for electing the said Sixteen Peers for Scotland: And accordingly the same Parliament, by an Act, Intituled, *An Act to make further Provision for electing and summoning Sixteen Peers for Scotland, to Sit in the House*

*House of Peers of the Parliament of Great Britain, &c.* have enacted, That thereafte if her Majesty shall declare her Pleasure for holding any Parliament, a Proclamation shall be issued under the Great Seal of Great Britain, commanding all the Peers of Scotland to meet at Edinburgh, or in any such Place in Scotland, and at such Time as shall be appointed therein, to elect the foresaid Sixteen Peers as by the foresaid Act of the Parliament of Scotland, and by this Act of the Parliament of Great Britain, is appointed.

This Proclamation must be duly published at the Market-Cross of Edinburgh, and in all the County-Towns in Scotland, Twenty five Days at least before the Meeting of the Peers to such Election.

All the Peers, before they proceed to Election, shall, in Presence of the Peers assembled take the following Oaths.

**I** A. B. do sincerely promise and swear, That I will be Faithful, and bear True Allegiance to Her Majesty Queen Anne. So help me God.

**I** A. B. do swear, That I do from my Heart abhor, detest and abjure, as Impious and Heretical, this damnable Doctrine and Position, That Princes Excommunicated or Deprived by the Pope or any Authority of the See of Rome, may be deposed.

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ed or murdered by their Subjects, or any other  
whatsoever.

And I do declare, That no Foreign Prince,  
Person, Prelate, State or Potentate, hath or ought  
have any Jurisdiction, Power, Superiority,  
Preeminence or Authority, Ecclesiastical or Spir-  
itual, within this Realm. So help me God.

A. B. do truly and sincerely acknowledge, pro-  
fess, testifie and declare in my Conscience, be-  
fore God and the World, That our Sovereign Lady  
Queen Anne is Lawful and Rightful Queen of  
this Realm, and of all other Her Majesty's Domi-  
nions and Countries thereunto belonging. And I  
solemnly and sincerely declare, That I do believe  
my Conscience, that the Person pretended to be  
Prince of Wales, during the Life of the late King  
James, and since his Decease, pretending to be,  
and taking upon himself the Stile and Title of  
King of England, by the Name of James III. or  
Scotland, by the Name of James VIII. or the  
Stile or Title of King of Great Britain, hath not  
by Right or Title whatsoever to the Crown of this  
Realm, or any other Dominions thereunto belong-  
ing. And I do renounce, refuse and abjure any  
Legeiance or Obedience to him. And I do swear,  
that I will bear Faith and true Allegiance to Her  
Majesty Queen Anne, and Her will defend to the  
most of my Power, against all Traiterous Con-  
spiracies and Attempts whatsoever, which shall be  
made against Her Person, Crown or Dignity.

And

And I will do my utmost Endeavour to disclose upon  
 and make known to Her Majesty and Her Successors,  
 all Treasons and Traiterous Conspiracies  
 which I shall know to be against Her, or any of Them.  
 And I do faithfully promise, to the utmost of my Power, to support, maintain and defend the Succession of the Crown against him the said James, and all other Persons whatsoever, as the same is and stands settled by an Act Entitled, An Act, declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown to Her present Majesty and the Heirs of Her Body, being Protestants. And as the same, by another Act, Entitled, An Act for the further Limitation of the Crown, and better securing the Right and Liberties of the Subject; is, and stands settled and entailed, after the Decease of Her Majesty; and for Default of Issue of Her Majesty to the Princess Sophia, Electress and Dowager of Hanover, and the Heirs of Her Body, being Protestants. And all these Things I do plainly and sincerely acknowledge and swear according to these express Words by me spoken and according to the plain and common Sense and Understanding of the same Words, without any Equivocation, mental Evasion, or secret Reservation whatsoever. And I do make this Recognition, Acknowledgment, Abjuration, Renunciation and Promise, heartily, willingly and truly upon

upon the true Faith of a Christian. So help me  
G O D.

And these Peers also, before they proceed  
to Election, are ordain'd to make, repeat,  
and subscribe the Declaration following.

[ A. B. do solemnly and sincerely, in the Pre-  
sence of G O D, profess, testify and declare,  
That I do believe, that in the Sacrament of  
the L O R D's Supper, there is not any Tran-  
substantiation of the Elements of Bread and  
Vine into the Body and Blood of Christ, at, or  
after the Consecration thereof by any Person  
whatsoever: And that the Invocation or Adora-  
tion of the Virgin Mary, or any other Saint,  
and the Sacrifice of the Mass, as they are now  
used in the Church of Rome, are Superstitions  
and Idolatries. And I do solemnly, in the Pre-  
sence of G O D, profess, testify and declare,  
that I do make this Declaration, and every Part  
thereof, in the plain and ordinary Sense of the  
Words read unto me, as they are commonly un-  
derstood by English Protestants, without any E-  
quivocation, or Mental Reservation  
whatsoever, and without any Dispensation al-  
ready granted me for this Purpose by the Pope,  
any other Authority or Person whatsoever; or  
without any Hope of any such Dispensation from  
any Person or Authority whatsoever; or without  
thinking that I am, or can be acquitted before  
B G O D

*G O D or Man; or absolved of this Declaration  
or any Part thereof, altho' the Pope, or any other  
Person or Persons, or Power whatsoever, should  
dispense with or annul the same, or declare that  
it was null and void from the Beginning.*

S Peers living in *Scotland*, but not present at such Meeting, may take the Oaths, make and subscribe the Declaration in any Sheriff Court of *Scotland*, and every Sheriff is required to return the original Subscription of such Oath and Declaration, and to make thereof a Return in Writing, under his Hand and Seal (*d*), to the Peers assembled; whereby such Peer shall be qualified to make a Proxy, or to send a signed List, containing the Names of the Sixteen Peers for whom he giveth his Vote.

As to the Peers of *Scotland* residing in *England*, they may take the said Oaths, and make and subscribe the said Declaration in the Courts of *Chancery*, of *Queen's Bench*, *Common Pleas*, or of *Exchequer* in *England*, which, being certified by Writ under the Seal of the Court to the Peers in *Scotland* at the Meeting

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(*d*) The House of Peers, upon the 26th *January* 1709, declared, That the Sheriff's Certificate of a Peer of *Scotland*'s taking the Oaths, in order to qualify himself to Vote at such Election, ought to be seal'd as well as sign'd.

Meeting, shall be sufficient to entitle such Peer to make his Proxy, or to send his signed List, as aforesaid.

And in case any Peer of *Scotland*, (who before issuing such Proclamation, have made the foresaid Oaths in *England* or *Scotland* to be certified as aforesaid; and if taken in Parliament, to be certified under the Great Seal of *Great Britain*) be at the Time absent in the Service of His Majesty, he may make a Proxy, or send a signed List.

Such as are Peers both of *England* and *Scotland*, must sign by the Title of their Peerage in *Scotland*.

A Peer who hath not Right to Vote at the election of the Sixteen, cannot be a Proxy, None are capable of more than Two Proxies at one Time.

The Peers must give the Names of the Persons to be Elected, to the Clerk of Registration, or to Two of the principal Clerks of the Session, who, after the Election, must certify the Names of these Elected, and sign and attache the same in presence of the Peers: Which Certificate, must be returned to the Court of Admiralty of *Great Britain*, before the Time appointed for Meeting of the Parliament.

The Peers shall come to such Meetings with their ordinary Attendants only, under Penalties now in Force in *Scotland*, which prescribe with what Number the Subjects

there may repair to the Courts of Justice (e).

(e) By Act 5. Parl. I. *James I. Anno 1424.* it statute, That none of what Condition soever trav ling in the Country, have with him moe Pers than may suffice him, and for whom he shall ready Payment. And if any Complaint be made these, the King's Officers are commanded to am them, and to put them under Lawborrows, till King be certify'd, and give Notice what shall done with these Trespassers.

By Act 82, Parl. 14. *James II. Anno 1457,* ordained, That all the Lieges shall, in sober quiet manner, come to the King's Courts Spir or Temporal, and that none bring with him Persons than are in his daily Houshold and Fam and upon coming to his Inns, that he lay all his Weapons. Ratified by Act 104. Parl. *James III.*

By Act 41. Parl. 6. *Queen Mary, Anno 1555* is statute, That Persons conveen'd before a Ju Court, have with them at the Bar, six allent of their Friends able to give them Counsel, their Advocates to defend; and the Justice or Ju es are to charge the Breakers of this Act to their Persons in Ward under the Pain of Rebellion and if they disobey, to put them to the Horn: if they obey and enter in Ward, they are to remain during the Queen's Pleasure.

By Act 140. Parl. 8. *James VI. Anno 1584,* above A&ts are ratified, with this Addition, that none repair to his Majesty's Justice Courts, for

The Peers so assembled, shall not act, propose, or treat of any Thing except only the election of the Sixteen Peers; and every Peer

final Causes, or otherwise than the said Acts provide, under the Pain of incurring the Crime of Concilation of our Sovereign Lord's Lieges, to be executed with all Rigour, as well against the Persons convocating, as against those who are convocated.

In July 1583, there was a Proclamation emitted, whereby the Subjects were prohibited to come towards Court with a greater Number than was appointed in the Proclamation, viz. Fifteen with an Earl, as many with a Bishop, Ten with a Lord, and as many with an Abbot or Prior; with a Baron Six. And all these were, under great Penalties, commanded to come in a peaceable manner.

An unlawful Convocation is a Commotion of the people raised without lawful Authority, and upon private Account. The convocating of the Lieges Bands of Men of War, for Daily or Monthly Wars, without special Licence, is by Act 75. Parl. 9. Queen Mary; and by Act 12. Parl. 10. James VI. punishable by Death. But naked Assistance at such meetings, is not *per se* relevant to infer Death, but only an arbitrary Punishment; as was found in the year 1665, and inferred from the above-mentioned Act 5. James I. And Sir George Mackenzie, in his *Criminals, Title Seditions*, concludes, That the Crime of simple Convocation is ordinarily pursued before the Council of Scotland, and was seldom punished either by the Council or by the Justice Court *tam Crimen per se*; but only as an aggravating Quality of a Riot or other Crime.

Peer who shall presume to propose, debate, or treat of any other Matter, shall incur the Penalty of a Premunire, in the 16. R. 5. Anno Dom. 1593.

In case any of the Sixteen Peers so chosen shall die, or be disabled in Law to sit in the House of Peers, Her Majesty is forthwith to issue a Proclamation for electing another Peer of Scotland to sit in the Room of such Person to be published, and the Election to be proceeded in, as is above directed.

By the 8th Act Parliament of Scotland, the Year 1707, it is provided and declared That none shall be capable to elect or to be elected, but such as are 21 Years complete and Protestant, excluding all Papists, or such who, being suspected of Popery and refusing to subscribe the Formula contained in the Act 3. Sess. 8. and 9. Parl. K. William II in the Year 1700 Entituled, *An Act preventing the Growth of Popery*; and is as follows.

**I**A. B. do sincerely from my Heart, profess and declare before GOD, who searcheth the Heart, That I do deny, disown and abhor these Tenets and Doctrines of the Papal Romish Church, viz. the Supremacy of the Pope and Bishop of Rome, over all Pastors of the Catholic Church, his Power and Authority over King and Princes and States, and the Infallibility that

pretend

debates to, either without, or with a General Council; his Power of Dispensing and Pardonning, the Doctrine of Transubstantiation, and the Corporal Presence with the Communion without the chipping up in the Sacrament of the L O R D ' s Supper, the Adoration and Sacrifice professed and practised by the Popish Church in the Mass, the Invocation of Angels and Saints, the Worshipping of Images, Crosses and Relicks, the Doctrine of Supererogation, Indulgences and Purgatory, and the service and Worship in an unknown Tongue. All which Tenets and Doctrines of the said Church, believe to be contrary to, and inconsistent with the written Word of G O D : And I do from my heart deny, disown and disclaim the said Doctrine and Tenets of the Church of Rome, as in the Presence of G O D , without any Equivocation, or Mental Reservation; but according to the known and plain Meaning of the Words as to me referred and proposed. So help me G O D .

The Peers on the Day, and at the Place appointed by the King's Prociamation, meet about Ten of the Clock, and are attended by the Clerk of Register, or by two Clerks of the Session, who call the Rolls of the Peers, and to such of them as are present administer the Oaths appointed by Law; after which, they call a second Time the Roll, and if the Peer be present in Person, he comes with an audible Voice the Sixteen Peers.

Peers, or gives to the Clerk a List of their Names, which he, in presence of the Meeting, reads ; and another Clerk, or his Servant, marks the Names of the Peers that such a Peer has elected and voted for. And if the Peer called by the Roll be absent, but is represented by his Proxy, or has sent a signed List, the Clerk reads the List, as before, and likewise the Certificates concerning the absent Peer's qualifying himself in order to vote in this Election, with the Proxy ; and any of the Peers present may inspect and examine if these several Writings be perfected according to the Prescript of the Law ; and if they be not found formal, he proposes his Objections, which the Clerk marks, before he proceed to the calling the other Peer next in the Roll, to give his Vote in the Election.

When all the Peers are called, and the Voting or Listing is ended, the Clerks make Scrutiny in presence of the Meeting ; and upon finding the Names of the Peers, who to the Number of 16, have Majority of Votes in the Election, they write out a Certificate signifying the Names of the said 16 Peers, at this Meeting elected, and sign and attest the same in presence of the Peers. And the Clerk of Register returns it to the Court of Chancery of Great-Britain, before the Time appointed for Meeting of the Parliament.

In this Certificate, no Notice is to be taken of the Objections made against any of these Peers, but such as please may get from the Clerks a Copy of these Objections, and at the down-sitting of the Parliament, they may, in the House of Peers, dispute the Election of the Peer objected against.

### THE FAMILY, NAME, AND TITLE OF THE NOBILITY OF SCOTLAND, RANKED ACCORDING TO THE ROLLS OF THE LAST SCOTTISH PARLIAMENT, ANNO 1707.

#### D U K E S.

#### Eldest Sons.

Hamilton, D. or Dut-	Marquis of Clidſdale.
chesſ of Hamilton.	
t, Duke or Dutchesſ	Earl of Dalkeith.
of Buccleugh.	
mos, D. of Lenox.	Earl of Darnly.
ordon, D. of Gordon.	Marquis of Huntly.
uglas, D. of Queensberry.	Earl of Drumlanrig.
nphell, D. of Argile.	Marquis of Lorn.
uglas, D. of Douglas.	Earl of Angus.
urray, D. of Athol.	Marq. of Tullibardine.
raham, D. of Montrose.	Marq. of Graham.
r, D. of Roxburgh.	Marq. of Cessford.

#### M A R Q U I S S E S.

#### Eldest Sons.

ay, Marq. of Tweeddale.	Lord Yester.
er, Marq. of Lothian.	L. Newbottle and Jedburgh.
bnſton, M. of Annandale.	L. Johnston,

#### E A R L S.

## E A R L S.

## Eldest Sons.

<i>Lindsay</i> , Earl of <i>Crawford</i> .	Lord <i>Lindsay</i> .
<i>Hay</i> , E. or Countess of <i>Errol</i> .	L. <i>Hay</i> .
<i>Keith</i> , Earl <i>Mareschal</i> .	L. <i>Keith</i> .
<i>Sutherland</i> , E. of <i>Sutherland</i> .	L. <i>Strathmaver</i> .
<i>Areskine</i> , E. of <i>Mar</i> .	L. <i>Areskine</i> .
<i>Lesly</i> , Earl or Countess of <i>Rothes</i> .	L. <i>Lesly</i> .
<i>Douglas</i> , E. of <i>Merton</i> .	L. <i>Aberdour</i> .
<i>Areskine</i> , E. of <i>Buchan</i> .	L. <i>Auchterhouse</i> .
<i>Cuninghame</i> , E. of <i>Glencairn</i> .	L. <i>Kilmairs</i> .
<i>Montgomery</i> , E. of <i>Eglington</i> .	L. <i>Montgomery</i> .
<i>Kennedy</i> , E. of <i>Cassils</i> .	L. <i>Kennedy</i> .
<i>Sinclair</i> , E. of <i>Caitness</i> .	L. <i>Bertendale</i> .
<i>Stuart</i> , E. of <i>Murray</i> .	L. <i>Down</i> .
<i>Maxwel</i> , E. of <i>Nithsdale</i> .	L. <i>Maxwel</i> .
<i>Seton</i> , E. of <i>Winton</i> .	L. <i>Seton</i> .
<i>Livingston</i> , E. of <i>Linlithgow</i> and <i>Callander</i> .	L. <i>Livingston</i> .
<i>Home</i> , E. of <i>Home</i> .	L. <i>Dunglass</i> or <i>Coldingham</i> .
<i>Drummond</i> , E. of <i>Pertb</i> .	L. <i>Drummond</i> .
<i>Home</i> E. of <i>Dunbar</i> .	
<i>Fleming</i> , Earl of <i>Wigton</i> .	L. <i>Fleming</i> .
<i>Lyon</i> , E. of <i>Strathmore</i> .	L. <i>Lyon</i> or <i>Glamis</i> .
<i>Hamilton</i> , E. of <i>Abercorn</i> .	L. <i>Paisley</i> .
<i>Areskine</i> , E. of <i>Kellie</i> .	L. <i>Pittenweem</i> .
<i>Hamilton</i> , E. of <i>Haddington</i> .	L. <i>Binning</i> .
<i>Stuart</i> , E. of <i>Galloway</i> .	L. <i>Garlies</i> .
<i>Mackenzie</i> , E. of <i>Seaforth</i> .	L. <i>Mackenzie</i> or <i>Kintail</i> .
<i>Maitland</i> , E. of <i>Lauderdale</i> .	L. <i>Maitland</i> .
<i>Hay</i> , E. of <i>Kinnoul</i> .	L. <i>Duplin</i> .
<i>Campbell</i> , E. of <i>Loudoun</i> .	L. <i>Mauchlin</i> .
<i>Creichton</i> , E. or Countess of <i>Dumfries</i> .	L. <i>Creichton</i> .
<i>Alexander</i> , E. of <i>Striveling</i> .	L. <i>Alexander</i> .
<i>Bruce</i> , E. of <i>Elgin</i> .	L. <i>Kinloss</i> .
<i>Carnegie</i> , E. of <i>Southesk</i> .	L. <i>Carnegy</i> .

uart, E. of Traquair.	L. Linton.
er, E. of Ancrum.	L. Nisbet.
eeems, E. of Weems.	L. Elcho.
msay, E. of Dalbousie.	L. Ramsay.
ilvy, E. of Airlie.	L. Ogilvy.
ilvy, E. of Findlater	L. Deskford.
and Seafield.	
alziel, E. of Carnwath.	L. Dalziel.
ly, E. of Leven and	L. Balgony and Raith.
Melvil.	
almash, E. of Dysart.	L. Huntingtour.
aulie, E. of Panmure.	L. Maule and Breck <sup>island</sup> .
amilton, E. of Selkirk.	L. Daire.
rney, E. of Northesk.	L. Rosehill.
uce, E. of Kincardine.	L. Bruce.
ndsay, E. of Belcarras.	L. Cummerlane.
uglas, E. of Forfar.	L. Wendarl.
diddleton, E. of Middleton.	L. Clermont.
ordon, E. of Aboyne.	L. Glenlivet.
vingston, E. of Newburgh.	L. Kinnaird.
yd, E. of Kilmarnock.	L. Boyd.
ochran, E. of Dundonald.	L. Cochran.
ouglas, E. of Dumbartoun.	L. Ettrick.
eith, E. of Kintore.	L. Inverurie.
mpbell, E. of Broadalbaine.	L. Glenurquhy.
ordon, E. of Aberdeen.	L. Haddo.
rammond, E. of Melfort.	L. Forth.
urray, E. of Dunmore.	L. Blair.
amilton, E. of Orkney.	L. Kirkwall or Deckmont.
amilton, E. of Ruglen.	L. Rickarton or Hillhouse.
uglas, E. of Marchb.	L. Neidpath.
ume, E. of Marchmont.	L. Polwart.
rmichael, E. of Hyndford.	L. Carmichael.
ackenzie, E. of Cromarty.	L. Tarbat.
alrymple, E. of Stair.	L. Dalrymple.
rimrose, E. of Roseberry.	L. Dalmeny,
oyle, E. of Glasgow.	L. Boyle.
llier, E. of Portmore.	
uart, E. of Bute.	L. Montstewart.
	Hope,

<i>Hope, E. of Hoptoun.</i>	<i>L. Nithrie.</i>
<i>Scot, E. of Delarain.</i>	<i>L. Hermitage.</i>
<i>Douglas, E. of Solway.</i>	<i>L. Tibbers.</i>
<i>Campbel, E. of Iſlay.</i>	<i>L. Oransay, or Dunoon, &amp;c.</i>

## V I S C O U N T S.

<i>Carey, Visc. of Falkland.</i>	<i>Osburn, V. of Dumblain, now</i>
<i>Conſtable, V. of Dunbar.</i>	<i>Duke of Leeds in England.</i>
<i>Murray, V. of Stormont.</i>	<i>Graham, V. of Preston.</i>
<i>Gordon, V. of Kenmure.</i>	<i>Cheney, V. of Newhaven.</i>
<i>Arbuthnot, V. of Arbuthnot.</i>	<i>Drummond, V. of Strathalan.</i>
<i>Creichton, V. of Frendraught.</i>	<i>Livingſton, V. of Teviot.</i>
<i>Seton, V. of Kingston.</i>	<i>Hay, V. of Duplin.</i>
<i>MacGill, V. of Oxenfoord.</i>	<i>Crawford, V. of Garnock.</i>
<i>Ingram, V. of Irving.</i>	<i>Primrose, V. of Primrose.</i>
<i>Livingſton, V. of Kilsyth.</i>	

## B A R O N S, or L O R D S.

<i>Forbes, L. Forbes.</i>	<i>Balfour, L. Burleigh.</i>
<i>Frazer, L. Salton.</i>	<i>Drummond, L. Madderty.</i>
<i>Gray, L. Gray.</i>	<i>Napier, L. Napier.</i>
<i>Stuart, L. Ochiltree.</i>	<i>Fairfax, L. Cameron.</i>
<i>Cathcart, L. Cathcart.</i>	<i>Richardſon, L. Cramond.</i>
<i>Sinclair, L. Sinclair.</i>	<i>Mackay, L. Rae.</i>
<i>Douglas, L. Mordingtoun.</i>	<i>Forrester, L. Forrester.</i>
<i>Semple, L. Semple.</i>	<i>Forbes, L. Pitſligo.</i>
<i>Elphingſton, L. Elphingſton.</i>	<i>M' Lellan, L. Kirkcudbright.</i>
<i>Oliphant, L. Oliphant.</i>	<i>Frazer, L. Frazer.</i>
<i>Frazer, L. Lovat.</i>	<i>Hamilton, L. Bargeny.</i>
<i>Ross, L. Ross.</i>	<i>Ogilvy, L. Bamff.</i>
<i>Sandilands, L. Torphichen.</i>	<i>Murray, L. Elibank.</i>
<i>Leſly, L. Lindores.</i>	<i>Galloway, L. Dunkeld.</i>
<i>Elphingſton, L. Balmerinoch.</i>	<i>Falconer, L. Halkerton.</i>
<i>Stuart, L. Blantyre.</i>	<i>Hamilton, L. Belhaven.</i>
<i>Cranſton, L. Cranſton.</i>	

<i>Landilands, L. Abercromby.</i>	<i>Lesly, L. Newark.</i>
<i>Sutherland, L. Duffus.</i>	<i>Nairn, L. Nairn.</i>
<i>Rollo, L. Rollo.</i>	<i>Churchill, L. Eymouth, now</i>
<i>Colvil, L. Colvil.</i>	<i>Duke of Marlborough in</i>
<i>Ruthven, L. Ruthven.</i>	<i>England.</i>
<i>Rutherford, L. Rutherford.</i>	<i>Kinnaird, L. Kinnaird.</i>
<i>Bellenden, L. Bellenden.</i>	<i>Abercromby, L. Glassford.</i>

*NOTE, Many of the above Families are of late forfeited, attainted, or failed in a Successor.*



### T I T L E III.

*Of the Order to be observed in Electing a Commissioner, or Representative of a Shire or Stewartry.*

BY the 52d Act, Parl. 3. James I. in the Year 1425, it was ordained, That all Barons and Freeholders of the King, seeing they are holden to give Presence in the King's Parliament and General Council, should from henceforth be bound to compear in proper Person, and not by a Proctor, except the Proctor alledge and prove a lawful Cause of their Absence.

But by 101 Act, Parl. 7. James I. in the Year 1427, it was statuted, That the small Barons and free Tenants need not come to Parliament;

Parliament ; so that of each Sheriffdom, Two or more wise Men, according to the Large ness of the Shire, chosen at the Head Court, shall be sent to Parliament, excepting the Shires of *Clackmannan* and *Kinross*, out of each of which One only is ordained to be sent, and these were called Commissioners of the Shire, but now Commissioners ; who, by the same Act are ordained to have the full power of the rest of the Sheriffdom, by a Commission under the Seal of the Sheriff, and of the other Barons of the Shire, to hear, treat, and finally determine all Causes to be proposed in Council or Parliament. This Act is ratified by Act 113. Parl. II. James VI. in the Year 1587. and thereby it is further declared, That the Compearance of these Commissioners in Parliaments shall relieve the whole other small Barons and Freeholders of their Suit and presence in Parliament. It seems, till this Act was made, the former Law of King James I. had not been in uniform and constant Observance ; for by Act 75. Parl. 14 James II. in the Year 1457, the States thought it expedient, That no Freeholder under 20 lib. shou'd be constrain'd to come to the Parliament, as for presence, except he were a Baron, or were specially called by the King's Officer, or by his Writing. And by Act 78. Parl. 6. James IV. in the Year 1503, it is ordained, That from 11th March 1503, no Baron

Two Baron or Freeholder within 100 Merks of  
genetw Extent, be compelled to come personal-  
, sha to the Parliament, except the King write  
Shires for them. And all others above that Ex-  
, and ment of 100 Merks are required to come to  
, bu arliament, under the pain of the old Un-  
, but w.  
; Ad There being in *Scotland* 33 Shires, the  
of the freeholders in each, before and since the Re-  
n un- evolution in 1689, sent to the Parliament of  
other Scotland Commissioners or Representatives in  
and f the following Number, set down in order of  
ed in the Rolls of Parliament.

## REPRESENTATIVES

	before the Revolution.	Since the Revolution (f).
<i>Edinburgh</i>	2	4
<i>Haddingtoun</i>	2	4
<i>Berwick</i>	2	4
<i>Roxburgh</i>	2	4
<i>Selkirk</i>	2	2
<i>Peebles</i>	2	2
<i>Lanerk</i>	2	4
<i>Dumfreis</i>	2	4
<i>Wigtoun</i>	2	2
<i>Air</i>	2	4
		<i>Dunbartoun</i>

it is (f) The Act for an additional Representation in  
, no parliament of the Greater Shires in *Scotland*, is da-  
Baron d June 14th, 1690.

## REPRESENTATIVES

	Before the Revolution.	Since the Revolution.
	Carried over	Carried over
	<i>Dunbartoun</i>	2
	<i>Bute</i>	2
	<i>Renfrew</i>	2
	<i>Stirling</i>	2
15.	<i>Linlithgow</i>	2
	<i>Perth</i>	2
	<i>Kincardin</i>	2
	<i>Aberdeen</i>	2
	<i>Inverness</i>	2
20.	<i>Nairn</i>	2
	<i>Cromerty</i>	2
	<i>Argyle</i>	2
	<i>Fife</i>	2
	<i>Kinross</i>	1
25.	<i>Forfar</i>	2
	<i>Bamff</i>	2
	<i>Kircudbright</i>	2
	<i>Southerland</i>	2
	<i>Caithness</i>	2
30.	<i>Elgin</i>	2
	<i>Orkney and Z</i>	2
	<i>Zetland S</i>	
	<i>Clackmannan</i>	1
	<i>Ross</i>	2
<hr/>		
In all		64
<hr/>		
In all		9

But now by the 22d Article of the Treaty of Union, it is agreed, That 45 shall be the Number of the Representatives of Scotland, in the House of Commons, of the Parliament of Great-Britain, which His Majesty, by His Proclamation under the Great Seal of Great-Britain, is empowered to appoint to meet at such Time and Place as His Majesty shall think fit; which Time is to be less than 50 Days after the Date of such Proclamation.

And by the 8th Act of the Parliament of Scotland in 1707, made for settling the Manner of Electing these 45 Commoners, it is provided, That of the said 45 Representatives, thirty shall be chosen by the Shires or Stewartries, as follows, *viz.* One for every Shire and Stewartry, excepting the Shires of *Aberdeenshire* and *Caithness*, which shall chuse One by Turns, *Bute* having the first Election. The Shires of *Nairn* and *Cromerty*, which are also to chuse One by Turns, *Nairn* having the first Election. And in like Manner, excepting the Shires of *Clackmannan* and *Kinross*, which are to chuse one by Turns, and *Clackmannan* is to have the first Election.

And in case of Death, or Legal Incapacity of any of these thirty Members from the Shires and Stewartries, it is ordained, That the Shire or Stewartry who elected the said

C Mem-

Member, shall elect another Member in his Place.

And seeing by the said 22d Article, an Act of Parliament of *Scotland* above-mentioned, a Faculty was reserved and given to the Parliament of *Great-Britain*, to make further Provision therein; pursuant whereunto, the first Parliament of *Great-Britain*, by their Act Entitled, *For rendering the Union of the two Kingdoms more intire and compleat*; have enacted, That when any Parliament should thereafter be called, the Representatives of *Scotland*, in the House of Commons of the Parliament of *Great-Britain*, shall be elected by the Authority of the Queen's Writs, under the Great Seal of *Great-Britain*, directed to the several Sheriffs and Stewarts, who, on Receipt thereof, shall give Notice of the Time of Election for the Knights or Commissioners: for their respective Shires or Stewartries; at which Time the Freeholders shall meet at the Head Burghs of their several Shires and Stewartries, and proceed to the Election of their Commissioner; and the Clerk of these Meetings, immediately after the Elections are over, is ordained to return the Name of the Person elected to the Sheriff or Stewart, who is annex it to his Writ, and return it with the same into the Court out of which the Writ issued.

From the Narrative or Preamble of the A& C. Parl. 11. James VI. Anno 1587, it appears, that all Freeholders of the King, under the degree of Prelates and Lords of Parliament, are to be warned by Proclamation, to be present at the choosing of the Commissioners small Barons in Parliament. And by A& C. Parl. 3d. Charles II. 1681, to the Effect sufficient Advertisement may be given to all parties having Vote in Election, who are to Parliament at the calling of a Parliament, the Sheriffs or Stewarts are ordained to make publickation of the Call and Diet of Parliament, and of the Diet appointed for Election, that at the Head-Burgh of the Shire or Burgh, upon a Market-Day, between 10 and 12 in the Forenoon: And also they are of, shained to make the like Intimation at for the Paroch-Church on Sunday immediately reperaftre ; which Diets of Election are by Tim A&, appointed to be at least 12 Days before the meeting of Parliament, that the commissioners elected may have Sufficiency Time to keep the Diet of the Parlia-

Upon the Receipt of the King's Writs or Personmons of Parliament, directed out of the Cancy of Great-Britain, to the several She- it w or Stewarts in Scotland ; the said She- which issue out a Precept to their Officers, or- ning them to make, in Manner prescribed

by the foresaid Act, Publication of the Calling and Diet of the Parliament of Great Britain, and of the Time the Freeholders are to meet at the Head-Burgh of the Sheriff Stewarty, for electing their Representative, which by Stat. 12 Ann Cap. 6. in the Year 1710, Intimation must be at least three Days before the Day of Election, under Penalty to the Sheriff or Stewart of forfeiting 50 l. *ft.*, one Moiety to the Crown, the other to the person who shall sue to be recovered in the Court of Session, by an Action summarily without abiding the Course of the Roll.

This Precept is executed before two Witnesses, and the Officers on the Day of the Meeting of the Freeholders report an Execution signed by them and the Witnesses; and there was no Sermon at any of the Churches the Officer nevertheless makes publication and returns a formal Execution, importing That at such a Church there was no Sermon on the Sunday the Day of the Execution.

If the Precept be not thus executed, if the written Execution be not formal, the Freeholders at that Meeting cannot proceed to a valid Election of their Representative so that another precept must be issued and duly executed.

By St. 7. Hen. IV. 15. Anno Dom. 1406,  
 is ordained, That in Order to the Elec-  
 tion, of Knights of Counties, for the Par-  
 ment, at the next County (a) to be held  
 after the Delivery of the Writ of the  
 Parliament, Proclamation shall be made in  
 the full County, of the Day and Place  
 the Parliament. And, by Stat. 7 and 8,  
 William III: 25, in the Year 1697. it is en-  
 ded, That upon every Election to be made  
 any Knight or Knights of the Shire, to  
 serve in Parliament, the Sheriff of the Coun-  
 ty in which such Election shall be made, shall  
 call his County-Court for the same Election,  
 the most publick and usual place of Election  
 within the said County, and where the same  
 has most usually been for 40 Years last past,  
 shall there proceed to Election at the next  
 County-Court, unless the same fall out to  
 holden within six Days after the Receipt  
 of the Writ, or upon the same Day, and  
 then he shall adjourn the same Court to some  
 convenient Day, giving 10 Days Notice of  
 Time and Place of Election.

On the Day appointed for the Election,  
 Freeholders meet and conveen at the

C 3 Head-

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(a) The Word *County*, as commonly, so here is  
 used to signify the County-Court, which the Sheriff  
 keeps every Month, either by himself, or his  
 Deputy.

Head-Burgh of the Shire or Stewartry, that Room where the Sheriff or Stewart Court is in use to be held between Mid Day and Two Afternoon; which Room made patent to them, and all others are removed except such Persons as they call, and the Commissioner last elected, or in his Absence, the Sheriff or Stewart-Clerk asks the Freeholders the Question who should preside and who shall be Clerk to the Meeting, and collects the Votes, and declares the Name of the Persons chosen Preses, and Clerk to the Meeting.

By the Act of Parliament 1681, the whole Freeholders in each Shire or Stewartry, having Election of Commissioners, were ordained to meet and conveen upon the first Tuesday of May, 1682, at the Head-Burghs of the respective Territories, and to make up Roll of all the Freeholders within the same whether lying within Stewartries, not having Commissioners, or Bailieries of Royalty, or Regality, or without the same, containing the Names and Designations of the Heritors and others, having Right to vote and expressing the Extent and Valuation of the Lands belonging to the several Freeholders, with Power to continue or adjourn the Meetings till the Roll of their Elections be fully compleated.

By the same Act, the Freeholders are appointed to meet and conveen at the Head-Burghs of the Shires and Stewartries respectively, at the *Michaelmass* Head-Court yearly thereafter, and to revise the said Roll for Election, and to make such Alterations therein as have occurred since their last Meeting, from Time to Time; which Roll, is ordained to be inserted in the Sheriff or Stewart Court-books, particularly appointed for that End, according as they shall be stated each *Michaelmass*-Court. And at the Election of the Commissioners, either at the *Michaelmass*-Court, or the calling of Parliaments; in case any Alteration has hapened in the Rolls of Election, since the last Meeting, the Person then coming to have Right to Vote, shall be inserted in the Roll; and there shall be no Objection admitted against any in that Roll, except such as shall be propounded before they begin to Vote to Election.

The Heritors and others craving Right to vote, and to be inserted in the Roll of Electors, must have the Qualifications and Capacities following.

## SECTION II.

*Of the Fundamental Capacity of an Elector*

**B**Y Stat. 5. Ann. 8. it is declared, That none shall be capable to elect a Representative for Shire or Burgh in Scotland, or to the Parliament of Great-Britain, except such as were (at the Time of passing this Act, which was in the Year 1707.) capable by the Laws of Scotland, to elect Commissioners for Shires or Burghs, to the Parliament of Scotland.

By several Acts of the Parliament of Scotland, and by their Decisions given in discussing contraverted Elections, the Qualifications of an Elector are defined, but more particularly by Act 21. Parl. 3. Ch. II. in the Year 1683. All which may be sum'd up in the following Conclusions.

An Elector must be infest in Property of Superiority, and in Possession of a Forty Shilling Land of old Extent, holding of the King *in capite*, (that is, not supplying the Vice and Place of another who is immediate Superior, but is not entered to the Superiority, and refuses to enter) distinct from the Feu-duties in Feu-lands: But when the Extent of the Land is not known, the Lands must be of 400 l. of valued Rent, or must

yearly Rent be worth 10 Chalders of Vieal, or 1000 lib. Scots, Feu-duties deduced (g). So that tho' one be infest, yet if he be in the actual Possession of Lands of the holding, and Extent or Valuation, or yearly Rent foresaid, he cannot be enrolled.

Infestment in a part of a Barony, tho' of the Holding foresaid, gives no Right to except, except the Party can instruct that their Lands are retoured to such a Proporation as puts them in the Terms of the Act of Parliament; or that they are of the Valuation, or of the yearly Rent above-written.

Confirmation by the King, of a Charter of Lands, of the holding, Extent or Valuation foresaid, gives no Right to Vote, except the Infestment be a *me*, and the Instrument of Sasine be confirmed and produced: or, the Confirmation of a Charter imports no

(g) By Stat. 7 and 8. in the Year 1697. *William Shill. 25.* all Conveyances of any Messuages, Lands, tenements, or Hereditaments in any County, City, Town corporate, Port or Place, in Order to multiply Voices, or to split and divide the Interest of any Houses or Lands, among several Persons, to enable them to vote at Elections of Members to serve in Parliament, are declared to be void, and have no Effect; so that no more than one single Voice shall be admitted for one and the same House or tenement. This Act is confirmed enlarged by Stat. Ann. cap. 22. in the Year 1712.

no more than the Confirmation of a personal Obligement.

Husbands, for the Freeholds of their Wives or for their own Right, when by the Courtesy of Scotland, they are Liferenters of Lands the Holding and Extent or Valuation, yearly Rent foresaid, have Right and Title to vote.

As also Liferenters of Lands of the Holding &c. foresaid, have Right to vote, provided their Right be constitute by Infestment; that a Liferenter, whose Right is constituted by Reservation in another's Right, or by personal Obligement, cannot vote.

Wherefore a Fiar has no Vote, when the Liferenter compears and claims his Vote, unless the Fiar have distinct Lands of the Holding, &c. foresaid.

The foresaid Heritors of Freeholds, tho' their Lands are adjudged, and tho' the Creditors be infest, have Right to Vote all the Years of the Currency of the Legal; and tho' the Lands are burdened with Infestments or Relief, or for Payment of Sums above their Value: So that these Persons infest for Relief, or for Payment of Sums, have no Right to Vote, but only the Granters of the said Rights, their Heirs or Successors.

The Right of Voting is competent to apparent Heirs who have not renounced, or whose Predecessors were not denuded, pro-

uled they are by virtue of their Predecessors Right, in Possession of Lands of the Holding, Extent, Valuation, or yearly Rent foresaid : nevertheless, an apparent Heir claiming Right the Estate of his Grandfather on the Mother's Side, cannot vote, until he be actually born'd Heir ; because, 'tis in Law presumed that there is an Heir Male, till the Contrary proven by a Service.

Proper Wadsetters (*b*) have Right to Vote, till a Decree Declarator or voluntar Redemption or Renunciation be produced.

To give an Apprizer or Adjudger Right of Voting, it is required, That the Apprising or adjudication be expired ; and next, that he first infest : In which Case, the Apprising not questionable on Pretence of an Order Redemption, until a Decree following there is produced ; wherefore a second or postor Apprizer cannot Vote, till the Lands be valued, and each Creditor's Share known,

that

(*b*) By Stat. 7, and 8. *William III.* — 25. No Person shall be allowed to have any Vote in Election of Members of Parliament, by Reason of any Trust or Mortgage, unless such Trustee or Mortgagee in actual Possession, or Receipt of the Rents and Profits of the same Estate ; but that the Mortgager *Cetuy qui Truste* in Possession, shall and may vote the same Estate, notwithstanding such Mortgage Trust.

that the Proportion of the retoured Extent  
Valuation or yearly Rent may appear.

Persons interdicted seem to be debarred from Voting, at least from being elected ; for how should a Man who is unfit to manage his private Concerns, be entrusted with the weighty Affairs of a whole People : But this may be thought to hold only, when the Interdiction is *Causa cognita*, because very judicious Men towards expediting their private Interest, sometime voluntarily interdict themselves.

By *Act 2. Parl. 1. Sess. 7. 1698. William III.*  
Persons having Protection from the personal Diligence of Creditors, during the Currency of these Protections, are declared incapable to chuse a Member of Parliament.

By *Act 16. Parl. 2. James IV. Anno 1489.*  
The free Tenants holding of the Prince, the Duke of *Rothsay* and Steward of *Scotland*, are ordained to compear and answer in the Parliament, with their Suit and Presence, until the King have a Son, and Suit-Rolls are ordained to be made, and endure till the Prince be born ; wherethro' the Vassals of the Principality holding of the King, during the Non-existence of a Prince, and possessing Lands on the Extent, Valuation or yearly Rent above exprest, have Right to vote in the Election of a Member of Parliament for the Shire in which their Lands ly.

In like Manner, by *Act 14. Parl. 1. Charles 1633*, it is declared, That the King and his Successors have undoubted Right to the Superiority of all Lands, Baronies, Mills, Woods, Fishing, Towers, Fortalices, Manouraces, and haill Petinents thereof, pertaining to whatsoever Abbacies, Priories, Prioresses, or whatsoever other Benefices, of whatsoever Name or Designation the same be, erected to Temporal Livings, before or after the general Annexation of Kirklands, in *July 1587*; and to the whole Casualties of these Superiorities, not dispon'd before *17th January 1627*. As also, by *Act 29. Parl. 1. Sess. 2. William and Mary, anno 1690*, it is ordained and declared, That the Superiorities of Lands, Mills, Fishings, heritable Offices and others, which formerly held of the Prelates or Bishops, or of their Chapters, or of Deans, Sub-deans, or Archdeacons, or of any other beneficed Persons before; and at the abolishing of these Offices and Chapters, do now pertain and belong to their Majesties, and their Successors: and that the Vassals of these Lands, &c. which formerly held of the said Prelates, Bishops and their Chapters, Deans and others aforesaid, shall in all Time coming hold the same of their Majesties and their Successors, in the same Way and Manner of holding, as they formerly held of the said Prelates, &c. conform to the Rights and Inseftments made to the said

said Vassals ; wherefore such Vassals, who by  
virtue of Charters and Precepts from His Ma-  
jesty or His Royal Predecessors, are infest in  
Church-lands, of the Extent, Valuation and  
yearly Rent above-mentioned, have Right to  
claim a Vote in the Election of Commissioners  
for the Parliament.

The Elector must be Major, and of the Pro-  
testant Religion ; for by Statute 5. Ann. 8.  
being the *Union Act*, it is declared, That none  
shall be capable to elect a Representative for  
any Shire or Burgh in *Scotland*, unless 21 Years  
of Age compleat, and Protestant ; excluding  
Papists, or such who being suspected of Popery  
and required, refuse to swear and subscribe  
the *Formula* contained in the 3 Act, made in  
the 8 and 9 Sessions of King *William's* Parlia-  
ment in *Scotland*, (which see Page 22.)

By Stat. 12. Ann. Cap. 6. in the Year 1713,  
it is enacted, That after the Determination of  
that Parliament, which was the last Parliament  
of the Queen's Reign, no Conveyance or Right  
whatsoever, whereupon Infestment is not ta-  
ken, and Seisin registered, in one Year after  
the *Teste* (a) of the Writs for calling a new Par-  
liament

(a) *Teste*, is a Word commonly used in the last Part  
of every Writ, wherein the Date is contain'd, which  
begins with these Words, *Teste meipso.* if it be an ori-  
ginal Writ ; or if judicial, *Teste Matthaeo Hale militi*  
or *Johanne Vaughan milite*, according to the Court  
whence it issues.

ment, *shal* entitle the Person so infest, to vote, to be elected in any Shire or Stewartry of Scotland ; and in case any Election happen during the Continuance of a Parliament, no Continuance or Right whatsoever, whereupon Infestation is not taken one Year before the Date a Warrant for taking out a new Writ, shall entitle the Person so infest to vote, &c. And at any of the Electors present, and suspecting another to have his Estate in Trust, may require the Preses of the Meeting to tender him this Oath.

A. do in the Presence of God, Declare and Swear, That the Lands and Estate of B. for which I claim to give my Vote in this Election, are not conveyed to me in Trust, or for the Benefit of any other Person whatsoever: And I do swear before God, That neither I nor any Person to my Knowledge, in my Name, or by my Allowance, hath given, or intends to give, any Promise, Obligation, Bond, Backbond, or other Security, for redisponing or reconveying the said Lands or Estate any Manner of Way whatsoever. And this is the Truth, as I shall answer to God. If the Elector refuse to swear and subscribe the said Oath, he shall neither vote, nor be elected.

Besides the above Oath, any other Objectives allowed by the Laws of Scotland, may be made against such Elector.

No

No Infestment taken upon any redeemable Right, (except proper Wadsets, Adjudications or Apprisings, allowed by an Act relating to Elections in 1681) shall entitle the Person so infest to vote, &c. And that no Person who hath not been inroll'd and voted at former Elections, shall be inroll'd or admitted to vote at any Election, except he produce a sufficient Right to qualify him to vote to the satisfaction of the Free-holders formerly inroll'd or the Majority there present; and the returning Officers shall make their Returns, by the Majority of the Free-holders inroll'd.

The Right of an apparent Heir voting by virtue of the Infestment of his Predecessor, and the Right of the Husband by virtue of the Infestment of his Wife, shall be always saved and reserved to them as formerly.

Nevertheless, any Conveyance or Right which by the Laws of Scotland, is sufficient to qualify a Person to vote in the Election of Members to serve in Parliament for Shires or Stewartries, whereupon Infestment is taken before the first of June 1713, shall entitle the Person so infested, to vote at the next Election for Members to serve in Parliament.

However, no Husband shall vote by virtue of any Infestment of their Wives, who are no Heiresses; or if the Husband hath no Right of Property in the Lands, on Account whereof his Vote is claim'd.

The eldest Sons of Noblemen, who being to  
 succeed their Father in Dignity and Honours,  
 so they be infest in Lands holden of the  
 Crown, of the Extent, Valuation or yearly  
 Rent above-exprest; yet they have not a Vote  
 in the Election of a Commissioner from the  
 Peerage, because they are *quasi* Peers of the  
 Realm, and have a Precedency allotted to  
 them: For, the eldest Son of a Duke takes  
 Place of an Earl; and the eldest Son of a  
 Marquess takes Place of a Viscount; and the  
 eldest Son of an Earl takes Place of a Lord or  
 Baron of Parliament: These eldest Sons did,  
 by their Birth enjoy a Privilege to sit  
 in the Parliament of *Scotland*, and to hear the  
 Transactions in the Meetings of the Estates of  
 the Kingdom, in order to fit them for being  
 worthy Members of that *August Assembly*,  
 when upon their Father's Decease, they should  
 sit in their Bench: And in ancient Times, they  
 were allowed to Sit and Vote in Parliament,  
 Proxies for Peers.

Albeit, the Act 101. Parl. 6. *James I.* and  
 7 114. Parl. 11. *James VI.* require, That  
 Free-holders qualified by Law to elect,  
 should have their actual Dwelling and Resi-  
 dence within the Shire; yet by Act of Par-  
 liament in the Year 1681, it is declared, That

D

Non-

Non-residence shall be no sufficient Object  
(i).



### S E C T I O N III.

#### *Of the Legal Capacity of an Elector.*

**A** Man attainted of Treason or Felony, denounced Fugitive from the Law, cannot be an Elector; albeit one denounced Rebel, and registered to the Horn for a Cause, is not precluded from Voting.

By *Aet 6. Parl. 1. Sess. 4. William and Mary* in the Year 1693. and *Aet 1. P. Ann. anno 1701* it is statuted and ordained, That all Electors of Members of Parliament, shall swear the Oath of Allegiance, and sign the same, with the Assurance, in Prelence of the Meeting, (which before they proceed to Election.

#### The Oath of Allegiance.

**I** A. B. do sincerely promise and swear, That will be Faithful, and bear true Allegiance to His Majesty King George. So help me God.

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(i) By *Stat. 1. Henry V. in the Year 1414*, statuted, That the Knights for Shires shall be returned in the County for which they are chosen, the Day of the Date of the Writ of the Summons, so that they be that chuse them: Also, Citizens and Burghes shall be resident in, and Free of the Cities or Burghs for which they are chosen.

## The Assurance.

A. B. do in the Sincerity of my Heart, acknowledge and declare, That His Majesty King George, is the only lawful undoubted Sovereign of this Realm, as well de jure, that is, of Right, as de facto, that is, in the Possession and Exercise of the Government: And therefore, I do sincerely and faithfully promise and engage, That I will, with my Heart and Hand, Life and Goods, maintain and defend His Majesty's Title and Government, against the pretended Prince of Wales, and his Adherents; and all other Enemies, who, either by open or secret Attempts, shall disturb or quiet His Majesty in the Possession and Exercise thereof.

And by Statute 6. in the Year 1708. Ann. it is enacted, That every Person who shall refuse to take and swear the Oath of Abjuration, (which see P. 15.) or being a Quaker shall refuse to declare the Effect thereof, upon his Solemn Affirmation, as directed by Statute 7. William III. 34. (k) to be administered by the Sheriff,

By Stat. 7, and S. William III. 34. and Stat. 13. William III. 4. it is enacted, That after the 4th of May 1666, every Quaker within the Kingdom of England, and the Dominion of Wales and Town of Berwick, who shall be required, upon any lawful Occasion, to take an Oath, where by Law an Oath is required, shall, instead of the usual Form, be permitted to make his other Solemn Affirmation or Declaration in these words, viz.

Sheriff, or by the President of the Meeting at any Election of Members to serve in the House of Commons, or any Place in Great Britain, or Commissioners for chusing Burgeses for any Place in Scotland, at the Request of any Candidate or other Person present, shall no be capable of giving any Vote for the Election of any such Member to serve in the House of Commons, for any Place in Great-Britain, or Commissioner to chuse a Burges in any place of Scotland.

## S E C T

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*I A. B. do declare in the Presence of Almighty God, t  
Witness of the Truth of what I say,*

Which shall be adjudged, and taken to be of the same Force and Effect, to all Intents and Purposes in all Courts of Justice, and other Places, as if such Quakers had taken an Oath in the usual Form.

If any Quaker making such solemn Affirmation Declaration, shall be lawfully convicted, wilfully and corruptly, to have affirmed or declared a Matter or Thing, which if the same had been in the usual Form, would have amounted to wilful Perjury, he shall incur the same Penalties, as by the Laws and Statutes of this Realm, are enacted against Persons convicted of wilful Perjury.

No Quaker, or reputed Quaker, shall, by virtue of this Act, be qualified to give Evidence in a Criminal Cause, to serve on a Jury, or bear Office or Place of Profit in the Government.

## SECTION IV.

the Order to be observed in objecting against Voters, and of that which is to be noticed concerning the Votes.

For any Person, who has not the fundamental Qualifications above set down, shall aim to be insert in the Roll, which shall give occasion to Objections; it is by the said A&t, r. 1681, statuted, That no Objection shall be admitted, but such as shall be propounded before they begin to the Election; and if the Objector shall not be cleared, and shall not acquiesce, they are allowed to take Instruments, containing their Objections against the admitting any Person to be insert in the Roll, or against excluding any from it. And no other objection can be propounded in Parliament, but what shall be contained in these Instruments. By the same A&t it is declared, That if the Persons objected against do compear before the Parliament, and instruct their Right to vote, the Objector shall pay their Expences, and be ther Fined in 500 Merks Scots; and if the objection be sustained in Parliament, the Objectors appearing, shall have their Expences,

and the Party objected against, shall be Fine  
in 500 Merks.

In Case these Objections had been made when a Parliament was not called, a particular Diet was to be appointed by the Meeting, and intimated to the Parties controveting, to attend the Lords of Session for the Determination, who should judge the same; the Diet appointed, summarily according to Law.

These Objections, with the Answers made thereto, are by the Clerk of the Meeting put into Writing; and if the Party objected against or the Objector, be not of themselves satisfied with one another's Arguments, Instruments are taken in the Hands of the Clerk to the Meeting, or other Notary, in which the Objections and Answers are inserted, and the Objector protests against the Vote of such a Person as being incapable; for the Meeting it self has no Jurisdiction for determining such Controversies, which were to have been decided either by the Parliament or Lords of Session as said is.

When all the Objections and Answers thereto are propounded and marked, the Meeting proceeds to the Election, in which every one of those objected against may vote upon the Peril.

By the Claim of Right for *England*, Stat. W. and M. Sess. 2. 2. It is declared, That

Election of the Members of Parliament  
ight to be free. Wherefore,  
By Stat. 5. W. and M. 20. no Collector,  
pervisor, Gauger, or other Officer or Per-  
whatsoever, concerned or employed in the  
arging, Collecting, Levying, or Managing  
Duties of Excise, or any Branch or Part  
reof. And by Stat. 12. and 13. W. 3. 10.  
Commissioner, Collector, Comptroller,  
archer, or other Officer or Person concer-  
ned or employed in discharging, collecting, or  
naging the Customs or any Branch thereof,  
ll, by Word, Message or Writing, or in any  
other Manner, endeavour to perswade any  
Elector to give or dissuade any Elector from  
giving his Vote for the Choice of any Person  
to be a Knight of the Shire, Citizen, Burges or  
son of any County, City, Burgh or Cinque-  
ort. And every Officer or other Person  
ending therein, shall forfeit the Sum of 100  
one Moiety thereof to the Informer, the  
er to the Poor of the Parish, where such  
fence shall be committed, to be recovered by  
Person that shall sue by Action of Debt, Bill,  
int, or Information in any of their Majesties  
urts of Record at *Westminster*, in which no  
*Join*, Protection, Privilege or Wager of Law,  
more than one *Imparlane* shall be allowed;  
every Person convict on such Suit, shall be  
ever after incapacitated to bear any Of-  
or Place of Trust under the Crown.

## S E C T I O N V.

*Of the Persons Eligible, and by Law qualified to represent in Parliament a Shire Burgh in Scotland.*

THE Parliament of Scotland consisted of Three Estates, the Clergy, the Barons and the Burgesses, and to the End, that these Three there might be no Confusion ; *Act 33. Parl. II. James VI. Anno 1587.* it was statuted, That no Person should take upon him the Function, Office or Place of all the Three Estates, or moe of them, but should occupy the Place of that Estate wherein he commonly professed himself to live, and where he took his Stile or Title : Which Act was occasioned by the Factions in the Reign of Queen Mary ; the Popish and Protestant Party contending who should prevail in Parliament. The Popish Clergy, (who were very numerous in Parliament, since all the Bishops, Masters Abbots did sit there as Churchmen,) each of them who had Lands and Heritage craved two Votes, one as Churchmen, and another as Barons ; to prevent which for the future, this Act was made, discharging any of the

ee Estates to take upon him the Office of  
the three Estates, or of any two of them,  
By Stat. 6. Ann. 7. Anno Dom. 1708, it is  
acted, That every Person disabled to be  
elected, or to sit or vote in the House of Com-  
mons of any Parliament of *England*, shall be  
disabled to be elected, or to sit or vote in the  
House of Commons, of any Parliament of  
*Great-Britain*.

An *Alien* cannot be elected a Member of  
the Parliament, because he is not the King's  
Subject ; and that albeit he be made  
Denizen by Letters, Patents, &c. for thereby  
he is made *quasi seu tanquam Ligeus* : But that  
will not serve, for he must be *Ligeus revera*,  
and not *quasi*, &c. And such an one hath been  
allowed by the House of Commons, because  
he can hold no Place of Judicature ; never-  
theless, an *Alien* naturalized by Parliament,  
is eligible to this or any other Place of Judi-  
cature. But by Stat. 12. and 13. W. 3. 2. Anno  
Dom. 1701. It is enacted, That after the Li-  
tigation of the Crown to the Princess So-  
nia of Hanover, no Person born out of the  
Kingdoms of *England*, *Scotland* or *Ireland*, or  
of the Dominions thereunto belonging, (altho'  
they be Naturalized or made Denizon, except  
such as are born of *English Parents*) shall be  
eligible to be a Member of the House of Com-  
mons,

By

By Stat. 23. Henry VI. Ch. 15. Anno Domini 1445. It is ordained, That the Knights of the Shires for the Parliament to be chosen shall be notable Knights of the same Countie for the which they shall be chosen; or otherwise such notable Esquires or Gentlemen born in the same Countie, as shall be able to be Knights, and no Man to be such Knight which standeth in the Degree of a Yeoman under. And in North-Britain, he who is incapable to vote in the Election of a Representative to the Parliament, cannot be elected. And by the Narrative of Act 11; Parl. Ja. VI. in the Year 1587, the Freeholders are directed to chuse wise Men, being the King's Freeholders, resident Indwellers in the Shire, of good Rent, and well esteemed; to be Commissioners to the Parliament for the Shire. But by the Act in the Parliament 1681 Non-Residence is no more an Objection.

None of the Judges of the King's-Bench, or Common-Pleas, or Barons of the Exchequer in England, can be chosen Knight, Citizen or Burgess of Parliament, because they are Assistants in the House of Lords; nevertheless any who have Judicial Places in the Court of Wards, Court of Dutchie, or other Courts Ecclesiastical or Civil, being no Lord of Parliament, are eligible. Agreeable whereunto, the Lords of Session, Lords Commissioners of Justice, and Barons of the Exchequer in Scotland, cannot be chosen to be a Member of the Hou-

Commons, by Reason of their Offices, which  
 require their constant Attendance in Scotland.  
 A Sheriff of a County cannot be elected for  
 another County in which he is Sheriff, tho' he  
 may be chosen for another County, as my Lord  
 Coke observes, That at the Parliament  
*Anno Dom. 1625.* the Sheriff of the County of *Buckingham* was  
 chosen Knight for the County of *Norfolk*, and  
 turned into the *Chancery*; and having a Sub-  
 Regalia out of the *Chancery* served upon him at  
 Suit of the Lady *C. pendente Parlamento*,  
 Motion he had the Privilege of Parlia-  
 ment allowed unto him, by the Judgment of  
 the whole House of Commons.

As the eldest Sons of Noblemen, by the  
 Laws of *Scotland*, cannot elect; so neither  
 should they be elected Members for the Par-  
 liament of *Scotland*; and albeit, by the Laws  
 of *England*, they may be Members of the House  
 Commons, yet in the Parliament holden  
 in the 6th Year of the Reign of Queen *Anne*,  
 in the Year 1708, it was found by the House  
 of Commons, That the ancient Custom in  
*Scotland* obtains with Respect to the Mem-  
 bers that come frome *Scotland*; and therefore,  
 No Nobleman's eldest Son cannot be elected to  
 present in Parliament any Shire in *Scotland*.  
 Majors, or Bailliffs of Towns incorporate  
 Justly eligible.

Any of the Profession of the Common-Law,  
 Hould in the Practice thereof, is eligible.

My

My Lord Chief Justice Coke observes, That at a Parliament holden at Coventry, Anno Henry IV. in the Year 1405. the Parliament was summoned by Writ and by Courlour of an Ordinance in the House of Lords. In 46. Ed. III. the King forbade that any Lawyer should be chosen Knight, Citizen or Burgess; by Reason whereof this Parliament was fruitless, and never a good Law made thereat: And therefore called *Indoctum Parliamentum*, i. e. The Lack-learning Parliament. And seeing these Writs were against Law, Lawyers ever since (for the great and good Service of the Common-wealth) have been eligible. For as it hath been said, the Writs of Parliament cannot be altered, without an Act of Parliament; and albeit the prohibitory Clause had been inserted in the Writ, yet, being against Law, Lawyers were of Right eligible, and might have been elected Knight, Citizen or Burgess in that Parliament of 6. Henry IV.

By special Order of the House of Commons, the Attorney-General is not eligible to be a Member of the House of Commons.

A Man attainted of Treason or Felony, or Fugitive from the Law, is not eligible; for concerning the Election of Knights, the Words of the Writ bear, *Duos milites quod in diis Circos magis idoneos & discretos eligi facit*. And for the Election of Citizens and Burghers,

The Writs, the Words of the Writ be, *Duos, &c.*  
*Inno* *discretioribus & magis sufficientibus*, which  
*Parli* *cannot be said to be, when they are*  
*y C* *gitive, or are attainted of Treason or Fe-*  
*Lord* *cy, &c.*

that a Albeit a Man be denounced to the Horn  
*Cit* *Registered for a Civil Cause, he may ne-*  
*is Pa* *theleſſ be chosen and elected to be a Mem-*  
*d La* *ber of Parliament.*

A Person interdicted cannot be elected.

Par By *Act 22, Parl. W. III. Sess. 7. 1698.*  
*again* *having Protection from the personal Di-*  
*at an* *cence of Creditors, during the Currency of*  
*) ha* *se Protections, and till he renounce the*  
*id, t* *neſt thereof, is incapable to be chosen a*  
*d, wi* *ember of Parliament.*

None of the Clergy, though he be of the  
*in t* *yeſt Order, are eligible to be Knight,*  
*r s w* *Citizen, or Burgess of Parliament, because*  
*een* *they are of another Body, viz. Of the Con-*  
*at Pa* *ation in England. And in Scotland, That*

Our Majesty's loving and good Subjects may  
*Con* *faithfully instructed in the Doctrine of*  
*gible* *their Salvation ; and that the Ministers of*  
*nons* *God's Word and Sacraments may the bet-*  
*Felon* *and more diligently attend upon their own*  
*or e* *charges and Vocation, it is by *Act 133, Parl.**  
*nigh* *VI. 1584, statuted, That they faithfully*  
*ites g* *it thereupon, to the Comfort and Edifica-*  
*gi f* *on of the Flock committed to them ; and*  
*d Br* *But none of the Ministers of the Gospel, or*  
*ge* *who*

who shall at any Time thereafter be admitted to that Function, shall in anyways accept, use and administrate any place of Judicature, in whatever Cause Civil or Criminal. By which Law, the present Clergymen in Scotland are precluded from being Members of Parliament.

And by Stat. 7, W. III. 4. Anno Domini 1696. no Person to be elected to serve in Parliament for any County, City, Town, Burgh, Port or Place within England, Wales or Berwick upon Tweed, after the Test of the Writ of Summons to Parliament, or suing out, or ordering of the Writ or Warrant of Election, upon the calling or suing of any Parliament hereafter, or after any such place becomes vacant in the Time of the present or any other Parliament, shall do by himself, or by any other Way or Means on his or their Behalf, or at his or the Charge, before the Election for any County, City, Town, &c. directly or indirectly giving present, or allow to any Person or Persons having Voice or Vote in such Elections, any Money, Meat, Drink, Entertainment or Provision; or make any Present, Gift, Reward, or Entertainment; or shall at any Time make Promise, Agreement, Obligation or Engagement, to give or allow any Money, Meat, Drink, &c. to, or for any such Person or Persons in particular, or to any such

Count

admin County, City, Town, &c. in general, or to  
 v's aye for their Use, Advantage, Benefit, Em-  
 of Juyoyment, Profits or Preferments, of any such  
 Clergymen or Persons, Place or Places in Or-  
 Clerger to be elected, or for being elected to serve  
 Mem Parliament for any such County, City or  
 own, &c.

Every Person or Persons so doing, giving,  
 rve presenting or allowing, making, promising, en-  
 Town ging, acting or proceeding, shall be disabled  
 Wal d incapacitated upon such Election to  
 est serve in Parliament, for such County, City,  
 or &c. or Place; and such Person shall be deem-  
 Wri and taken no Member in Parliament, but  
 g of all be declared and enacted to be to all  
 y su tants, Constructions and Purposes, as if  
 of they had been never returned, or elected  
 all members for the Parliament.

Mean By Stat. 5 and 6. Anno Dom. 1695. W. and  
 the . 7. it is enacted, That no Member of  
 oun House of Commons, shall, at any Time,  
 concerned directly or indirectly, or any  
 person in Trust for him, in the farming, col-  
 ons, gering or managing any of the Duties, or  
 mmer Aids that shall be granted by A&t of  
 Gi liament, except the Commissioners of the  
 at a treasury, and the Officers and Commis-  
 oligat sers for managing the Customs and Excise,  
 y M Commissioners of the Land-Tax, not ex-  
 y su nding the present Number in each Office  
 ny su Commission.

By

By Stat. 11 and 12, W. 3 ch. 2. Anno Domini 1700, it is enacted, That if any Member of the House of Commons, during the Time of his being a Member of Parliament, his Deputy or any other in Trust for him, his Benefit, take, enjoy, or execute any Office, Place or Employment, touching or concerning the farming, managing or collecting the Duty of Excise, or determining Appeals concerning the said Duty; or controlling or auditing the Accompts of the same, such Persons are declared and enacted to be absolutely incapable of sitting, voting or acting as a Member of the House of Commons in such Parliament.

And by Stat. 12 and 13, W. 3. ch. 3. it is enacted, That no Member of the House of Commons shall be capable of being Commissioner or Farmer of the Customs, or holding or enjoying in his own Name or in the Name of any other Person in Trust for him; or for his Use or Benefit, or of executing by himself or his Deputy, any Office, Place or Employment, touching or concerning the farming, collecting or managing the Customs.

If any Member of the House of Commons shall, during the Time of his being a Member of Parliament, by himself or his Deputy, or any other in Trust for him or his Benefit, take, enjoy, or execute any

Dome Place or Employment, touching or concerning the farming, managing or collecting Customs ; such Persons are declared and enacted to be absolutely incapable of sitting, or acting or acting as a Member of the House of such Parliament.

By Stat. 4 and 5. Anne ch. 8. it is enacted That no Person who shall have, in his Name, or in the Name of any Person or Persons in Trust for him, or for his Benefit, of any new Office, or Place of Profit whatsoever under the Crown, which, at any Time hereafter shall be created or erected ; nor any Person who shall be a Commissioner or Sub-Commissioner of the Prizes, Secretary or Receiver of the Prizes, nor any Comptroller of the Houscompts of the Army, nor any Commissioner being Transports, nor any Commissioner of the Sick or Wounded, nor any Agent to any Regiment, any Commissioners for Wine-Licences, nor Govetnour, nor Deputy-Governour of any the Plantations, nor any Commissioner of Navy employed in any of the Out-ports, or any Person having any Pension from Crown during Pleasure, shall be capable of being elected, or of sitting, or voting for a Member of the House of Commons, in any Parliament which shall be hereafter summoned and holden.

No greater Number of Commissioners may be made for the Execution of any Office,

fice, than have been employed in the Execution of any such from the first Day of the Session.

Nothing contained in the above Act shall extend or be construed to extend to any Member of the House of Commons, being an Officer in Her Majesty's Navy or Army who shall receive any new or other Commission in the Navy or Army respectively.

If any Person hereby disabled or declared to be incapable to sit or vote in an Parliament hereafter to be holden, shall nevertheless be returned as a Member to serve for any County, City, Town or Cinqueport in any such Parliament, such Election and Return are hereby enacted and declared to be void, to all Intents and Purposes whatsoever: And if any Person disabled, or declared incapable by this Act to be elected, shall presume to sit or vote as a Member of the House of Commons, in any Parliament to be hereafter summon'd, such Person, so Sitting or Voting shall forfeit the Sum of 500 l. to be recovered by such Person as shall sue for the same by Action of Debt, Bill, Plaintiff or Information, where no Essoin, Protection or Wager of Law shall be allowed, and only one Imparllance.

By Stat. 2, 3 and 6. An. ch. 25. it is enacted, That no Register for the registration of Memorials of Deeds, Conveyances and Will

Ex within the East-riding and West-riding of County of York, or Town and County Kingston, upon Hull, or his Deputy for the time being, be capable of being chosen a Member to serve in Parliament.

By Stat. 5 and 6. *William and Mary* 7. the Commissioners of the Treasury, and the Officers and Commissioners for managing the Customs and Excise, not exceeding the Number at that Time, in each Office and Commission; and the Commissioners of the Land- Tax may be elected and chosen Members of Parliament. And by the 4 and 5. *Anne* the Officers in the Navy or Army, who shall receive any new or other Commission in Navy or Army respectively, may be chosen Members of the House of Commons.

or d. This by Statute 5 and 6. *William and Mary* 7. Anno Dom. 1704, enacted, That it and may be lawful to, and for any Member or Members of the House of Commons, to be a Member or Members of the Corporation of the Governour and Company of the Bank of England.

and by Stat. 6. *Anne* 7. Anno Dom. 1708. Commissioners for disposing of 398085 £. and other Sums arising to Scotland, by Way of Equivalent, to the Purpose mentioned in the Articles of Union, shall Reason thereof, or of any other Commission for disposing thereof, or of any part of

the same, or the Execution of such Commission, not be disabled from being a Member of Parliament.

By Stat. I. *Georg. cap. 56.* it is enacted That no Person having any Pension from the Crown, for any Term or Number of Years either in his own Name, or in the Name of any other Person in Trust for him, or for his Benefit, shall be capable of being elected, or chosen a Member of, or for sitting or voting as a Member of this present, any future House of Commons, which shall be hereafter summoned.

If any Person who shall have such Pension at the Time of his being so elected, at any Time after, during such Time as shall continue to be a Member of the House of Commons, shall presume to sit or vote in that House, in such Case he shall forfeit 20*l.* for every Day in which he shall so sit or vote there, to him who shall sue for the same in any of the Courts at *Westminster*, and the Monies so forfeited shall be recovered by the Person so suing, with full Costs of Suit, by Action of Debt, &c.

## SECTION VI.

*of the Commission granted by the Freeholders, to the Person elected, and of what is to be observed in the due signing thereof.*

When the Objections against the Freeholders claiming Vote in the Election, and to be insert in the Roll of the Electors, are ended, the Oaths appointed by Law, for qualifying Electors, are administered by the Preses of the Meeting, to the Freeholders present: After which, the Meeting proceeds to the Election, and the Votes are collected in Order of the Roll, and are marked by the Clerk of the Meeting; and one Freeholder capable to be elected, who has Plurality of Votes, is declared the Commissioner and Representative of the small Barons and Freeholders in that Shire or Country, and he gets a Commission for that end, in Relation to which,

By *Act 101 Parl. 7. James I. Anno 1427.* is statuted, That the Commissioners shall have full and whole Power from the remenant Freeholders in the Sheriffdom, under the witnessing of the Sheriff's Seal, with the seal of divers Barons of the Shire, to hear,

E 3 treat,

treat, and finally determine all Causes to be Cle  
proponed in Parliament.

And by *Act 113. Parl. 11. James VI.*  
*Anno 1587.* it is ordained, That the Com  
missioners should be authorized with suffi  
cient Commissions of the Sheriffdoms from  
which they come, sealed and subscribed by  
Six at least, of the Barons and Freehol  
ders.

Sir George Mackenzie in his *Observatione M*  
says, That in controverted Elections, if ne  
ther of the Competitors have Six, a new Elec  
tion will be ordered, because unlawful. Yet,  
if all the Barons were cited, and few  
er than Five were only present, it might be  
thought, that a Commission signed by the  
Five, would be sufficient; because the Ab  
sence of Barons should not prejudge the Shire.  
However, in the Convention 1678, many  
inclined to think, a new Election should  
that Case be ordered, because of this Ab  
and that the Shire should not have a Vo  
in Parliament, who would not send leg  
Commissions.

And by *Act 27. Parl. 15. James VI.*  
*Anno 1597.* tis statuted, That no Barons sha  
at any Parliament, be received as Commis  
sioners from any Shire, except they bring and  
produce sufficient Commissions granted  
them in a full Convention of the whole  
Freeholders in the several Sheriffdoms, and  
authorized with the Subscription of a great  
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umber of the Barons then present, and of  
e Clerk to the Meeting.

The Commission must be sign'd in a full Con-  
vention, at which the Signers must have been  
present, and voting: For in the Parliament  
anno 1681, at discussing the controverted  
elections of the Commissioners of *Haddingtoun*  
*Shire*, no Votes were sustained, but of those  
who voted and signed the Commission before  
the Meeting was dissolved: And the Votes  
of these who came immediately thereafter,  
were not sustained, tho' the Preses returned  
with some of the Number. But in the Electi-  
ons of *Berwick Shire*, it was found by the  
same Parliament, That a Person was capable  
of vote, albeit he was detain'd Prisoner, by  
Misinformation of one of the Competitors;  
having given to the Meeting, an Account  
of the Way and Manner of his Imprisonment,  
and declared to them his Vote; and after his  
largement, having immediately signed the  
Commission.

By Stat. 7. *Henry IV.* 15. it is ordained,  
that after the Election, the Names of the  
Persons chosen, be they present or absent, are  
to be wirtten in an Indenture, under the  
seals of all them that did elect, which is the  
present Practice in all the Shires of *Scotland*.

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T I T L E

## T I T L E IV.

*Of the Order to be observed in electing the Citizens or Burgesses for the Cities and Burghs in Scotland, and of the Qualifications of the Commissioners to choose, and of the Person elected.*

**T**H E R E are in Scotland 66 Cities and Burghs, who sent Representatives to the Parliament of Scotland; and every one of these Burghs sent one Member chosen by the common Council of the said Burgh, except that the City of Edinburgh sent two Commissioners: So that this State of Burgesses consisted of Sixty Seven Members sent from the following Burghs, ranked in the Rolls of Parliament, thus,

<i>E</i> Dinburgh	2	<i>G</i> lassgow
Perth	1	Air
Dundee	1	Haddingtoun
Aberdeen	1	Dysert
5 Stirling	1	Kirkcaldy
Linlithgow	1	Montrose
St. Andrews	1	Couper

Anstruther-Easter	I	Forfar	I
Dumfermline	I	Rothsay	I
Inverness	I	Nairn	I
Burntisland	I	Forres	I
Innerkeithing	I	45 Rutherglen	I
Kinghorn	I	North-Berwick	I
Brichen	I	Anstruther-wester	I
Irvine	I	Cullen	I
Fedburgh	I	Lauder	I
Kirkcudbright	I	50 Kintore	I
Wigtoun	I	Annandale	I
Dumfries	I	Lochmaben	I
Pittenweem	I	Sanquhar	I
Selkirk	I	New-Galloway	I
Dumbartoun,	I	55 Kilrenny	I
Renfrew	I	Fortrose	I
Dumbar	I	Dingwal	I
Lanerk	I	Dornock	I
Aberbrothock	I	Queensferry	I
Elgin	I	60 Inveraray	I
Peebles	I	Inverury	I
Crayl	I	Wick	I
Tain	I	Kirkwall	I
Culross	I	Inverbervey	I
Bamff	I	65 Stranraer	I
Whithorn	I	Campbeltoun	I

By the foresaid *Act 8. Parl. Anno 1707.* It provided, That of the Forty Five Representatives of Scotland, in the House of Commons, of the Parliament of Great-Britain, Fifteen

Fifteen should be chosen by the Royal Burrow as follows, *viz.*

That the Town of *Edinburgh* should have Right to elect and send one Member to the Parliament of *Great-Britain*. And,

That each of the other Burghs should elect a Commissioner in the same Manner, as they were in Use to elect Commissioners to the Parliament of *Scotland*; Which Commissioners all Burghs, being divided into Fourteen Clans or Districts, should meet at such Time, as in such Burghs within their respective Districts as Her Majesty, Her Heirs or Successors should appoint, and should elect one for each District, which are as follows; here placed according to their Rank in the Rolls of Parliament.

### The First District.

- I. *Tain, Dingwall, Dornock, Wick, Kirkwall*
- II. *Inverness, Nairn, Forres, Fortrose*.
- III. *Elgin, Bamff, Cullen, Kintore, Inverurie*.
- IV. *Aberdeen, Montrose, Brichen, Aberdeenshire, Inverbervy*.
- V. *Perth, Dundee, St. Andrew's, Couper, Fife*.
- VI. *Anstruther-Easter, Pittenweem, Crail, Anstruther-Wester, Kilrenny*.
- VII. *Dysart, Kirkcaldy, Burntisland, Kinghorn*.

VIII. *Stirling, Innerkeithing, Dumfermling, Fross, Queensferry.*

IX. *Glasgow, Dumbarton, Renfrew, Ruthern.*

X. *Haddingtoun, Jedburgh, Dumbar, Northwick, Lauder.*

XI. *Linlithgow, Selkirk, Lanerk, Peebles.*

XII. *Dumfries, Kirkcudbright, Annan, Lochaben, Sanquhar.*

XIII. *Wigtoun, Whitehorn, New-Galloway, Carrawer.*

XIV. *Air, Irvine, Rothsay, Inverary, Camp-toun.*

And by the same A<sup>t</sup> it is ordained, That here the Votes of the Commissioners of the Burghs, met to choose their Representatives for their several Districts to the Parliament of Great Britain, shall be equal : In that case, the President of the Meeting shall have casting or decisive Vote, by and attour his vote as a Commissioner for the Burgh from which he is sent.

The Commissioner from the eldest Burgh resides in the first Meeting ; and the Commissioners from the other Burghs in their respective Districts, are to preside afterwards by turns, in the Order as the said Burghs were called in the Rolls of the Parliament of Scotland.

In Case any of the said Fifteen Commissioners from Burghs, shall, during the Curren-

cy of a Parliament, decease, or become legally incapable to sit in the House of Commons then the Town of *Edinburgh*, or the District which choosed the said Member, shall elect another in his Place, to serve, during the Continuance of that Parliament.

But there being a Faculty given by the 22d Article of the Treaty of Union, and the Act of the Parliament of Scotland, annexed to the Parliament of Great Britain, make further Provision therein: Therefore, the first Parliament of Great-Britain, by the said Act, for rendering the Union of the two Kingdoms more entire and compleat, enacted, That for Election of the Fifteen Representatives of the Royal Burrows, the Sheriff of the Shire of Edinburgh, shall, on Receipt of the Writ, direct his Precept to the new Lord Provost of Edinburgh, to cause a Burgh to be elected; and on Receipt thereof, the City shall elect, and their common Clerk certify his Name to the said Sheriff, who annex it to his Writ, and return it to the Court from whence it issued. And as to the Royal Burghs divided into Fourteen Clans, the several Sheriffs or Stewards, shall, on Receipt of their several Writs, direct a Precept to every Royal Burgh within their respective Jurisdictions, reciting the Contents and of the Writ, commanding them to elect a Commissioner, as they formerly used, to

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ames VI. 1587. it may be thought, that a  
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riament of Scotland; and to order the Com-  
missioners to meet at the presiding Burgh, upon  
the 30th Day after the Test of the Writ, un-  
less on the Lord's Day, and then the Day after,  
and choose their Burgeses and the common Clerk  
of the presiding Burgh, shall, immediately af-  
ter Election, return the Name of the elected,  
the respective Sheriff or Stewart, who shall  
anex and return as aforesaid.

And in case a Vacancy should happen in  
the time of Parliament, by Decease or Incapaci-  
ty, a new Member shall be elected, conform  
to the Method before appointed herein. And  
in case such Vacancy be of a Representative  
of any one of the said Fourteen Classes, that  
Burgh which presided at the Election of the  
deceased or disabled Member, shall preside at  
the new Election.

And in case that on the Issuing of the  
Writs of Summons for electing, any Shire or  
Bewartry hath not at the Time, a Turn to  
elect; then it shall be omitted out of the Writ  
directed to such a Sheriff or Stewart.

To maintain and preserve the Distinction of  
the Estates of Parliament, and to avoid their  
confusion, as is directed by *Act 33. Parl. II.*  
*James VI.* 1587. it may be thought, that a  
freeholder not being an actual Trading Mer-  
chant, cannot be chosen a Member of Parlia-  
ment to represent a Burgh. And Sir George  
Mackenzie of Rosehaugh, Advocate to King  
Charles

*Charles II.* in his *Observations* upon that *Act* did say, It was made to keep Barons, who could not get themselves chosen to represent their Shires, from being elected Burgeses of Parliament, though they were Provosts or Magistrates, as they then ordinarily were: And by that same *Act* it may be thought, that a Burgess, who is ordinarily so designed, should be debarred from being chosen a Baron or Knight of a Shire. However, this *Act* was long in desuetude, till by *Acts* of Burrows, all Burgesses are discharged from electing Gentlemen to represent them in the Parliament under the pains specified in these *Acts*: For, his they found Gentlemen did not adhere to the true Interest of Burghs, which they did not understand; and it might be suspected, that none desired to be so elected, but such as had private Designs; albeit on the other Hand, it might be thought a proper Way for Burghs above to have their Interests maintained by Lawyer Towneable Statesmen, whom they may chuse.

Further, by an *Act* 3. Parl. Ch. II. it is determined, That only actual Trading Merchants can represent Burghs-royal in Parliament; which *Act*, was founded upon an express Decision of the Session.

But none of these Laws made for preclusion, Gentlemen nor Merchants to be chosen to represent Burghs-royal in Parliament have taken Effect; for in Imitation of the English Parliament

And did choose Lawyers and Learned Gentlemen to represent Burghs in Parliaments before the Union, and continue still so to do. However, these ancient Laws are so far regarded, that the Commissioner sent to elect, is a Burgess of the Burgh from whom he is sent, and the Member elected is a Burgess of one or more of the Burghs within the District, which might be chosen to represent. And this we may find in the fundamental Qualification of a Citizen Burgess to be elected Member of Parliament, and is in place of a Freehold, with Reference to Commissioners from Shires. But besides, his being a Burgess, he must have all the other Qualifications by Law required in Electors of Commissioners of Shires, and now the Person elected, to represent a Shire mentioned in the former Section, to which I refer.

Upon the Receipt of the Sheriff's Writ, sent above directed, the Magistrates and common Town-Clerk of the respective Burghs by whom the Community is represented, meet in their Council-House; and the Sheriff's Pre-Meet being read, they either proceed immediately to the Election of a Commissioner, or appoint another Diet for that purpose; and in that comes, they nominate their Commissioner, giving him a Commission and power to meet upon the Day appointed by the Sheriff's Writ at the presiding Burgh, with the Commissioners of the other Burghs within that

that District, to chuse and elect a Representative from the several Burghs of their District, to sit and vote in the House of Commons of the ensuing or current Parliament of Great-Britain.

And on the 30th Day after the Tests Writ or Summons of Parliament, the severall Commissioners meet and chuse their Members of Parliament accordingly, upon which the common Clerk of the presiding Burgh, returneth the Name of the Person elected to their respective Sheriff or Stewart who directed his Burgh the Precept for Choosing.

*An Alphabetick TABLE of the Royal Burghs in Scotland, which send Representatives as Members to the Parliament of Great-Britain Shewing,*

The Rank in the Roll of Parliament of Scotland.	The District the Burgh belongs to.	The Shire which it lies in.
A		
<i>A</i> Berbrothock 33	iv	Forfar
Aberdeen 4	iv	Aberdeen
Air 9	xiv	Air
St. Andrews 7	v	Fife
Annan 51	xii	Dumfries
Anstruther-Easter 15	vi	Fife

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ſt: D	Wester	3	
Com			
nt			
ſtſt	ſtſt	39	
ichen		21	
ever	entiland	18	
emb			
ch th			
etum	appleſtoun	66	
air	bar	14	
ed	yl	36	
en		48	
oſſ		38	
D			
Burg	gwell	57	
es a	rock	58	
ritai	bar	31	
	bartoun	29	
hite	fermling	26	
	freis	16	
it	dee	3	
	art	11	
E			
burgb		1	
n		34	
F			
is	yr	31	
s		44	
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vii	Fife
xiv	Argyle
v	Fife
vi	Fife
iii	Bamff
viii	Perth
i	Ross
i	Sutherland
x	Haddingtoun
ix	Dunbartoun
viii	Fife
xii	Dumfreis
v	Forfar
vii	Fife
iii	Edinburgh
	Elgin
v	Forfar
ii	Elgin
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Lanerk

Haddingtoun

Roxburgh

Fife

Argyle

Kincardine

Inverness

Aberdeen

Air

Fife

Fife

Aberdeen

Fife

Kircudbright

Orkney

Berwick

Lanerk

Linlithgow

Dumfreis

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Dumfries  
Selkirk  
Stirling  
Wigton

## T

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i

Ross

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i  
xiii  
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Oathings  
Wigton  
Wigton



## T I T L E V.

*Of the Duty of the Sheriffs and Stewarts  
Majors or Provosts, and Baillies  
Clerks, and of other Officers concerned  
in returning the Writ of Summons  
to Parliament, with the Names of the  
representatives elected.*

**T**HE Duty of a Sheriff or Stewart is, 1st, In giving Order for the Election of a Representative for the Shire or Stewartie over which he is Sheriff or Stewart. 2dly, directing his Precepts to the Magistrates of the Cities or Burghs within his County, chusing Citizens or Burgesses to come to Parliaments. And 3dly, In making true lawfull Returns of the Writs of Parliament with the Indentures and Names of the Knights and Citizens elected, to the Court on which these Writs are issu'd.

It is by Stat. 6. Anne 17. in the Year 1701. enacted, That the Sheriffs and Stewarts so chosen, shall, in the respective Shires and Stewartries in Scotland, to whom the Writs under the Great Seal of

al of Great-Britain, for electing and chusing  
 the 45 Representatives of Scotland are direct-  
 ed, shall, on Receipt of such Writs, forth-  
 worth give Notice of the Time of Election for  
 Knights or Commissioners for their respective  
 Shires or Stewartries; which Intimation is  
 to be made according to the Order prescri-  
 bed by the Act of Parliament 1681, (of which  
 more) and three Days at least before the  
 Day appointed for the Meeting of the Elec-  
 tion.

The Clerks chosen by the Freeholders,  
 meeting in Obedience to the Sheriff's Order  
 Precept for chusing their Commissioners,  
 (as elsewhere declared) are by the same  
 Statute 6. Anne 6. ordained to return the Names  
 of the Persons elected at such Meeting, to  
 the Sheriff or Stewart of the Shire or Stew-  
 artry.

The Sheriff again, by the same Act, is  
 required to annex the Return of the Com-  
 missioner's Name to the Writ under the  
 Great Seal directed to him, and to return it  
 in the same, unto the Court out of which  
 Writ of Summons to the Parliament is  
 issued.

By Stat. 7. Hen. IV. 15. it is ordained,  
 that after Election, the Names of the Per-  
 sons so chosen, shall be written in an Inden-  
 ture sealed and tacked, as is directed by that  
 of which before.

The Stat. 23, Hen. VI. 15, in the Year 1445, ordains, That every Sheriff who maketh no due Election of Knights to come to Parliament, in convenient Time, without Collusion and that maketh not good and true Return of such Elections, shall forfeit to the King 100 lib. and also shall incur the pain of 100 lib. to be paid to him that will sue for the same against him, his Executors or Administrators for this Cause, by way of Action of Debts, with his Costs in this Behalf expended, without wagering of Law of his Demand, or having Essoin (a.)

By Stat. 10. and 11. W. III. 7. in the Year 1700, it is enacted, That the Sheriff or other Officer having the Execution and Return of any Writ of Parliament, shall, on or before the Day that any Parliament shall be called meet, and with all convenient Expedition, not exceeding Fourteen Days after any Election made by virtue of any new Writ, either Person, or by his Deputy, make Returns

(a) *Essoin.*] *Essonum* cometh from the French *Essoign*, Exonni (i. e.) *causarius miles*; he that hath his service forborn or excused upon any just Cause, Sickness, &c. It signifies in the common Law England, The Allegation of a just Cause of Absence, and an Excuse for him that is summoned to appear in a Court, and answer to any Action or Claim against him. It is the same with *Excusatio* in the Civil Law.

the same to the Clerk of the Crown in the High Court of Chancery, to be by him sealed, and shall pay to the Clerk of the Crown sh. for every Knight of the Shire, and 2 sh. for every Citizen, Burgess, &c. which the Sheriff, &c. shall charge to the King, and have allowed him upon his Account.

Every Sheriff, or other Officer or Officers foreaid, who shall not make the Returns according to the true Intent and Meaning of this Act, shall forfeit for every such Offence the sum of 500 lib. one Moiety whereof shall be His Majesty, and the other to him or them at will sue for the same, to be recovered by Action of Debit, Plaintiff or Information, in any His Majesty's Courts of Record at Westmister, wherein no *Essoin*, *Protection* or *Wager Law* (b) shall be allowed, nor more than one parlane (c).

F 4

By

(b) *Wager of Law.*] *Wage variare*, from the French *Gager pignus*, signifies the giving Security for the Performance of any Thing; and *variare legem* is to put Security, that he will make Law at the Day assigned; and to make Law, is to take an Oath that he hath not the Debt challenged at his Hand, and to bring with him so many Men as the Court shall sign, to avow upon their Oath, that in their Consciences he has sworn truly. These that come to urge the Defendants, are by the Civilians called *Argatores*, and, by the *Feudes*, *Sacramentales*, as in English Law.

(c) *Imparlane.*] *Interlocutio*, or *Interloquelo*, is a Motion made in Court, whereby the Defendant craves a Reate, or any other Day to put in his Answer.

By Stat. 7. and 8. W. III. 7. continued by All C  
 Stat. 12 and 13. W. III. 5. it is enacted whi  
 That all false Returns wilfully made of an Ret  
 Knight of the Shire, Citizen, Burgess, Baron t, o  
 of the Cinque-ports, or other Members to seraine  
 in Parliament, are against Law, and are there  
 by prohibited; and in case that any Person o  
 Persons shall return any Member to serve i  
 Parliament for any County, City, Borough  
 Cinque-port or Place, contrary to the last Dete  
 mination in the House of Commons, of the Rig  
 of Election, in such County, City, Cinque-port  
 Place, That such Return so made, shall b  
 and is adjudg'd to be a false Return.

The Party so grieved, to wit, every Person  
 that shall be duly elected to serve in Parliame  
 for any County, City, Borough, Cinque-port  
 Place, by such false Return, may sue the Off  
 cers and Persons making or procuring the sam  
 and every or any of them, at his Election,  
 any of His Majesty's Courts of Record  
 Westminster, and shall recover double the Da  
 mages he shall sustain, by reason thereof, tog  
 ther with his full Costs of such Suit.

Any Officer that shall falsely and malicio  
 return more Persons than are required to  
 chosen by the Writ or Precept on which a  
 Choice is made, the like Remedy may be h  
 against him or them, and the Party or Part  
 that willingly procure the same, and every  
 any of them, by the Party grieved at his  
 election.

ed by All Contracts, Promises, Bonds and Securi-  
 tates whatsoever, made or given to procure  
 Return of any Member to serve in Parlia-  
 ment, or any Thing relating thereto, are  
 sustained to be adjudged void ; and whoever  
 makes or gives such Contract, Security, Pro-  
 mises or Bond, or any Gift or Reward to pro-  
 cure such false or double Return, forfeits the  
 sum of 300 lib. one Third part thereof to be  
 His Majesty, another Third part thereof  
 the poor of the County, City, Borongh, or  
 place concerned, and one Third part thereof  
 to the Informer, with his Costs to be recov-  
 ed in any of His Majesty's Courts of Record  
 Westminster, by Action of Debt, Bill, Plaintiff  
 Information, wherein no *Effoin*, *Protection*  
*Wager of Law*, shall be allowed, nor more  
 than One in one *Imparlane*.

Every Information or Action brought upon  
 Stat. 12. and 13. W. III. 5. must be  
 brought within the Space of Two Years af-  
 the Day the Cause of Action shall arise, and not  
 together.

By Stat. 33. Hen. VI. 15. in the Year 1455,  
 it is ordained, That every Sheriff, after the De-  
 livery of any Writ of Election to him made,  
 shall make and deliver, without Fraud, a suffi-  
 cient Precept under his Seal, to every Mayor  
 or Bailiff, or to Bailiffs or Bailiff, where no  
 Mayor is, of the Cities and Burghs within his  
 County, reciting the said Writ, commanding  
 them

them by his Precept ; if it be a City, to ch<sup>t</sup>  
by the Citizens of the same City, *Citizens*, a  
in the same Manner and Form, if it be a Bur  
by the Burgeses of the same, to come to t  
Parliament.

And by *Stat. 7. and 8. W. III. 25.* when  
Lord Chancellor, Lord Keeper, or Lords Com  
missioners of the Great Seal, for the Time b  
ing, shall issue out Writs for summoning Mem  
bers to attend in Parliament, the several Writs  
shall be delivered to the proper Officer, whom  
the proper Execution thereof doth proper  
ly appertain, and to no other Person what  
soever : And every such Officer, upon Re  
ceipt of the same Writ, shall, upon the Ba  
thereof, indorse the Day he received the sam  
and shall forthwith, upon Receipt of the Writ,  
make out the Precept or Precepts to each Bo  
rough, Town corporate, Port or Place within  
his Jurisdiction, where any Member or Mem  
bers are to be elected to serve in a New Par  
liament, or to supply any new Vacancy in Pa  
liament, and within *Three Days* after the Re  
ceipt of the said Writ of Election, shall, by him  
self, or proper Agent, deliver, or cause to be  
delivered, such Precept or Precepts to the pro  
per Officer of any such Borough, Town co  
porate, Port or Place within his Jurisdiction  
to whom the Execution of such Precept doth  
belong or appertain, and to no other Person  
whatsoever.

And when the Mayor or Bailiffs return the  
cept to the same Sheriff by Indentures, eve-  
Sheriff thereupon must make a good and  
to t  
Return of every such Writ, and of eve-  
Return by the Mayors, or Bailiff or Bailiffs,  
here no Mayor is, to him made.

And every Sheriff, at every Time he doth  
me contrary to this Statute, or any other Statutes  
the Election of Knights, Citizens and Bur-  
1 W  
ges to come to Parliament, before this time  
cer, de, shall incur the Pain contained in the  
tute made in the 8th Year of *Henry VI.*  
what moreover, shall forfeit and pay to every  
n R  
son hereafter chosen, Knight, Citizen or  
e Ba  
rgess in his County, to come to any Par-  
: sam  
ment, and not duly returned, or to any o-  
e Wo  
Person, which, in default of such Knight,  
ch Ba  
izen or Burgess, will sue, 100 lib. whereof  
with any Knight, Citizen and Burgess so grieved,  
Men  
erally, or any other Person, which, in their  
Parli  
ault, will sue, shall have his Action of Debt  
n Pa  
aint the saids Sheriffs, or his Executors or  
ne R  
ministrators, to demand and have the said  
y hi  
lib. with his Costs spent in that Case; and  
to  
t in such Action, taken by virtue of this  
ne p  
tute, the Defendant shall not wage his Law  
n co  
the Demand foresaid in any ways; and that  
iction  
Defendant in such Action shall have any  
t do  
soiz.

When the Sheriff maketh not Election in a  
County-Court, and a good Return accord-  
A  
dingly,

dingly, he forfeits 100 lib. to the King, and shall i  
100 lib. more to him that will sue, to be p the  
covered by Action of Debt, with Costs, shall lo  
manner fully mentioned in Statute 23. Hen VI. 4.  
VI. 15. by which Law it is also provided  
~~haver~~  
That every Knight, Citizen or Burges, t  
come to any Parliament to be holden, in du  
Form chosen, and not returned, as aforesaid  
is to begin his Action of Debt as before, withi  
Three Months after the same Parliament com  
menced, to proceed in the same Suit effectuall  
without Fraud; and if he do it not so, and  
ther that will sue, shall have the same Actio  
of Debt, as it is before said, and shall recove  
the same, with his Costs spent in this Behal  
in Manner and Form aforesaid; so that n  
Defendant in such Action shall wage his Law  
nor be *esjoined* in any ways, as afore is said  
and that such Persons shall be, in the Action  
foresaid, as in a Writ of Trespass, done again  
the Peace of the Common Law.

Not only the King's Courts of Records a  
Westminster, may judge Actions against Sherif  
and others concerned in making undue Re  
turns, but also by Statute 11. Henry IV. 1.  
is ordained, That the Justices assigned to tak  
Affizes, shall have Power to enquire at the  
Sessions of Affizes, of such Returns made; an  
it be found by Inquest, and due Examination  
before the same Justices, that any Sheriff ha  
made a Return, contrary to the Statutes, h  
sha

g; and shall incur the Penalty of 100 lib. to be paid  
be to the King, and the Knights unduly return'd  
sts, shall lose their Wages. And by Statute 6. Hen.  
Hen. VI. 4. All Sheriffs shall have their Answer and  
video *Traverses* (d) to Inquests and Offices, before any  
ss, the Justices of Assize to be taken; and the said  
n du Sheriff shall not be endamaged into the King  
resaid his Successors, for any such Inquest taken,  
within until they be duly convicted in Form of Law.  
com and whereas by Statute Henry VI. 7. the She-  
tralliffs are to return such Knights of the Shire, as  
and be chosen by the Majority of those that can  
Action spend Forty *Shill.* by Year, and above: It is  
ecover hereby enacted, That if any Sheriffs return  
Behalf Knights to the Parliament, contrary to that  
at mordinance, the Justices of Assizes in their  
Law sions shall have power thereof to enquire;  
said if by Inquest the same be found before  
etion Justices, and the Sheriff thereof be duly at-  
gainanted, he shall incur the Penalty of 100 lib.  
be paid to the King; and also that he have  
rds a prisonment by a Year, without being let to  
herif *Main-prize* (e) or Bail; and the Knights un-  
e Roy return'd shall lose their Wages.

I. Never-  
tab

the (d) *Traverse.*] From the French, *Traverser*, i. e. *Trans-*  
; and *signifies sometimes to deny, sometimes to over-*  
; now a Plaintiff's Bill, much used in Answers to  
natiōns in Chancery, and signifieth, that which the De-  
fendant pleadeth, to avoid the Claim against him.

es, h (e) *Main-prize.*] A Compound French Word, from  
sh Latin, *Manu capio*, signifies in the English Law,  
the

Nevertheless, the Sheriff nor his Unde  
Sheriffs in any County or City, nor t  
Mayor, Bailliff, Constable, *Portgreve* (f) or  
ther Officer or Officers of any Burgh, To  
corporate, Port or Place to whom the Execu  
on of any Writ or Precept, for electing Mem  
bers to serve in Parliament, doth belong  
appertain, shall give, pay, receive or take  
ny free Reward or Gratuity whatsoeve  
for the making out Receipt, Delivery, R  
turn or Execution of any such Writ or P  
recept.

The Duty of the Magistrates of Cities  
Burghs, is to give due Obedience to t  
Sheriffs Precepts, issued out for choosing  
Citizen or Burgess to come to Parliame  
and by making in due Time, by themselv  
or their Clerk, to the Sheriff of the Coun

the taking and receiving a Man into friend  
Custody, who otherways is and might be comm  
ted to Prison, upon Security given of his fu  
coming at a Day assigned, and they that thus  
dertake for any, are called *main Peruors*; beca  
they do receive him into their Hands, from he  
comes the Word, *Mainpernable*, which denotes  
that may thus be baill'd; for, in many Cases, a M  
is not *mainpernable*.

(f) *Portgreve.*] *Portigrevius*, a Saxon Word, t  
vel *portus praefectus*, signifies a Magistrate in ce  
Sea-Coast-Towns. Cambden says, *The chief Magi*  
of London (now Lord Mayor) was so called.

proper Return of his Precept, with the  
Name of the Citizen or Burgess elected.

By Stat. 7 and 8. W. III. 25. the proper  
Precept of every Burgh or Town corporate,  
whom the Execution of the Sheriff or o-  
ther Officer, his Precept for chusing Citi-  
zens or Burgesses to serve in Parliament, is  
rec'd, so soon as he receives the Precept,  
upon the Back thereof, indorse the Day  
of his Receipt thereof, in the Presence of  
Party from whom he received such Pre-  
cept and shall forthwith cause Notice to be  
given of the Time and Place of Election,  
shall proceed to Election thereupon, with-  
in the Space of eight Days next after the  
Date of this Receipt of the said Precept,  
give four Days Notice, at least of the  
Time appointed for the Election; but Stat.  
eorg. &c. three Days at least.

And by Stat. 23. Henry VI. 15. it is e-  
d, That the Mayor or Bailliffs make E-  
on for a Citizen or Burgess, and return  
fully the Precept to the same Sheriff, by  
tumblers betwixt him and them, to be made  
thus the said Elections; and of the Names of  
said Citizens and Burgesses, by them so  
en: And at every Time that any May-  
or and Bailliff, or Bailliffs or Bailliff, where no  
or is, shall return others than those cho-  
ord, by the Citizens or Burgesses of the Ci-  
or Burrows where such Election be, or  
shall

shall be made, shall incur and forfault to the King 40 lib. And moreover, shall forfault, and pay to every Person chosen a Citizen or Burgess to come to Parliament, and not by the same Mayor and Bailliff, or Bailliffs or Bailliff, where no Mayor is, returned, or any other Person, which in Default of such Citizen or Burgess so chosen, will sue 40 l. whereof every one of the Citizens and Burgesses so grieved, severally, or any other Person which in their Default will sue, shall have his Action of Debt against every one of the said Mayors and Bailliffs, Bailliffs or Bailliff, where no Mayor is, As to gainst their Executors and Administrato 14 to demand and have of every of the said Mayors and Bailliffs, or Bailliffs or Bailliff, where no Mayor is, 40 lib. with his Costs, in this Case expended.

And that in such Action of Debt, by Force of this Statute, no Defendant it, and any ways shall wage his Law of the Demand, nor have an *Effoin*.

The Laws above-cited, prohibiting and punishing false or wrongous, and double *Burland*; turns, relate to Mayors, Provosts and Bailliffs of Cities and Burghs, as well as to their Bailliffs.

As to the Royal Burrows of Scotland, the *Te* is by Statute 6. An. 6. enacted, That the Sheriff of the Shire of Edinburgh, shall, next Day

Receipt of the said Writ of Summons  
Parliament, directed to him, forthwith  
a Precept to the Lord Provost of  
*Edinburgh*, to cause a Burgess to be elected  
that City.

After the Election of the Member of Par-  
liament, chosen by the Magistrates and  
own-Council of *Edinburgh*, the common  
erk of the City shall certifie the Name of  
Member elected, to the Sheriff of *Edin-  
burgh*, who shall annex it to his Writ, and  
again return it with the same, into the Court from  
which the Writ issued.

As to the other Royal Burghs divided in-  
to 14 Classes or Districts, the Sheriffs or  
the Swarts of the several Shires and Stewart-  
Baillies, shall, on the Receipt of their several  
Comits, direct their several Precepts to every  
burgh within their respective Shires or Stew-  
taries; reciting therein the Contents of the  
Writ, and the Date thereof: And command-  
them forthwith to elect each of them  
Commissioner, as they used formerly to  
Commissioners to the Parliament of  
England; and to order the said respective  
Commissioners to meet at the presiding Burgh  
their respective District, (naming the said  
Presiding) upon the 30th Day after the Day  
of the Test of the Writ, unless it be on the  
Lord's Day, commonly called Sunday, and then  
next Day after; and then to chuse their

Burgesses for the Parliament: And the common Clerk of the then presiding Burgh, shall immediately after the Election, return the Name of the Person so elected, to the Sheriff or Stewart of the Shire or Stewart, wherein such presiding Burgh is, who shall annex it to his Writ, and return it with the same, into the Court from whence the Writ issued. And in case a Vacancy shall happen in Time of Parliament, by the Death or legal Incapacity of any Member, a new Member shall be elected in his Room, conformable to the Method herein, before appointed, and in case such Vacancy be of a Representativeness for any one of the said 14 Classes or Districts of the said Royal Burgh, that Burgh which presided at the Election of the deceased or disabled Member, shall be the presiding Burgh at such Election.

The Duty of the Clerk of the Crown with Respect to Returns, is defined by Statute 7 and 8. William III. 7. which ordains him to enter in a Book kept for that Purpose, every single and double Return of any Member or Members to serve in Parliament, which shall come into his Office or into his Hands, and also every Alteration and Amendment as shall be made in every such Return; to which Book, all Persons shall have free Access to search.

com like Copies for reasonable Fees; and the  
 , shall Party prosecuting such Suit, may, at any  
 n trial, give in Evidence, such Book, or a true  
 e Shew copy thereof, relating to such false or double  
 artn return, and shall have like Advantage there-  
 o shay, as if he produced that Record him-  
 th tself; and if the Clerk of the Crown will-  
 Wlly omit to perform his Duty in the Pre-  
 nappes, he shall for every such Offence, for-  
 ase ult to the Party grieved, 500 l. to be re-  
 Mvered in any Court of Record at *Westmin-*  
 nfor, by Action, Bill, &c. wherein no *Effoin*  
 poin to be allowed, nor more than one Im-  
 a R lrance.

4 Ch All Actions hereupon, are to be brought  
 Burgh within two Years after Cause, and not af-  
 Elec.

emb  
 h n That one may know the several Burghs  
 Crow which each respective Sheriff or Stewart  
 by S to direct his Precepts, I have thought fit  
 ordar ne sa turn  
 in P insert the following Table.



*An Alphabetick Table of all the Shires  
Counties in Scotland, shewing,*

Rank in the Roll of Parlia- ment.	Name of the Shire.	Name of the Town in that Shire,
--	-----------------------	------------------------------------

	<b>A</b>	
xxviii.	<i>Aberdeen</i>	<i>Aberdeen</i> <i>Inverury</i> <i>Kintore</i>
ix.	<i>Air</i>	<i>Air</i> <i>Irvine</i>
xxii.	<i>Argyle</i>	<i>Campbletoun</i> <i>Inverary</i>
	<b>B</b>	
xxvi.	<i>Bamff</i>	<i>Bamff</i> <i>Cullen</i>
iii.	<i>Berwick</i>	<i>Lauder</i>
xii.	<i>Bute</i>	<i>Rothsay</i>
	<b>C</b>	
xxix.	<i>Caithness</i>	<i>Wick</i>
xxxii.	<i>Clackmannan</i>	
	<b>D</b>	
xi.	<i>Dumbartoun</i>	<i>Dumbartoun</i> <i>Annan</i> <i>Dumfries</i> <i>Lochmaben</i> <i>Sanquhar</i>
vii.	<i>Dumfries</i>	

ank in  
e Roll  
Parlia-  
ent.  
i.

XXX.

XXI.

XXV.

ii.

R

	Name of the Shire.	Name of the Burghs in the Shire.
	E	
i.	<i>Edinburgh</i>	<i>Edinburgh</i>
xxx.	<i>Elgin</i>	{ <i>Elgin</i> Forres
	F:	
xxi.	<i>Fife</i>	{ St. Andrew's Anstruther-Eas. Anstruther-Wej. Burntisland Couper Crayl Dumfermling Dysert Innerkeithing Kilrenny Kinghorn Kirkcaldy Pittenweem Aberbrothock Breichen Dundee Forfar Montrose
xxv.	<i>Forfar</i>	
	H:	
ii.	<i>Haddingtoun</i>	{ Dumbar Haddingtoun Northberwick

Rank in the Roll of Parlia- ment.	Name of the Shire.	Name of the Town or Burgh.	Rank the Re f Parli ment o cosland
xix.	I <i>Inverness</i>	<i>Inverness</i>	xii
	K. <i>Kincardine</i>	<i>Inverbervey</i>	xxxii
xxiv.	<i>Kinross</i>		i
xxvii.	<i>Kirkcudbright</i>	<i>Kirkcudbright.</i>	v
vii.	L. <i>Lanerk</i>	{ <i>Glasgow</i> <i>Lanerk</i> <i>Rutherglen</i>	xxvii
xv.	<i>Linlithgow</i>	{ <i>Linlithgow</i> <i>Queensferry</i>	xiv
xx.	N. <i>Nairn.</i>	<i>Nairn</i>	ix
xxx.	O. <i>Orkney and Zet- land.</i>	<i>Kirkwall</i>	xxxii
vi.	P. <i>Peebles</i>	<i>Peebles</i>	
xvi.	<i>Perth</i>	{ <i>Culross</i> <i>Perth</i>	R

Town Rank in  
the Roll  
of Parlia-  
ment of  
Scotland.

Name of the  
Shire.

Name of the Burgh  
or Town.

R.

xiii.

*Renfrew*

*Renfrew.*

xxxiii.

*Ross*

*Dingwall*  
*Fortrose*  
*Tain.*

iv.

*Roxburgh*

*Fedburgh*

S.

v.

*Selkirk*

*Selkirk.*

xxviii.

*Sutherland*

*Dornock.*

xiv.

*Stirling*

*Stirling*

W.

ix.

*Wigtoun*

*Newgalloway*  
*Stranrawer*  
*Whithorn*  
*Wigtoun*

Z.

xxxii.

*Zetland and  
Orkney*

*Kirkwall.*

## T I T L E VI.

*Of the Duty of the Person elected, and what he is to do before he can lawfully sit and vote in either of the Houses of Parliament.*

**T**H E Person elected to be a Member of the House of Commons, after the Election, is, by Stat. 4. and 5. Ann. 8. prohibited to accept of any Office or Profit from the Crown, during such Time as he shall continue a Member; otherwise his Election shall be, and by that Act is declared to be void, and a new Writ shall issue for a new Election, as if such Person, so accepting, was naturally dead.

Nevertheless, such Person shall be capable of being again elected, as if his Place had not thus become void.

If Members by Law incapacitate, disabled and declared incapable to sit in Parliament, shall be returned; their Election is not only void, but if they presume to sit and vote in the House of Commons, they shall forfeit 500 lib. in Manner mentioned in the forfeited Statute 4th and 5th, Ann. 8. and as is declared

the preceeding Title, which shews the qualification of the Person eligible.

It is by *Stat. 5. Eliz. I.* in the Year 1563. enacted, That every Person who hereafter shall be elected or appointed a Knight, Citizen or Burgess, for any Parliament to be held, shall, before he enter into the Parliament-House, or have any Voice there, open receive and pronounce the Oath of Supremacy; and that he who shall enter into the Parliament-House, without taking the said Oath, shall be deemed no Knight, Citizen, Burgess nor Baron for that Parliament, and shall have any Voice; but shall be to all Intents, Constructions and Purposes, as if he had never been returned nor elected Knight, Citizen, Burgess or Baron for that Parliament, and shall suffer such Pains and Penalties, as if he had presumed to sit in the same, without Election, Return or Authorisation.

And the *Stat. 7. James I.* in the Year 1608, enacts, That all and every the Knights, Citizens, Burgesses and Barons of the five parts of the Commons House of Parliament, at any Parliament or Session of Parliament, to be assembled, before he, or they, shall be permitted to enter into the said House, shall make, take, and receive the Oath of Allegiance, mentioned in the Statute of 3.

*Ja.*

[ 100 ]  
Ja. I. ch. 4. in the Year 1606. commonly  
called, *The Oath of Allegiance.*

As also, it is by 30. Ch. II. I. Anno Domini 1679. statuted, That none who shall be a Member of the House of Commons, shal vote in the House of Commons, or sit there during any Debate in the said House of Commons, after their Speaker is chosen, until such Member shall, from Time to Time, and in Manner following, first take the several Oaths of Allegiance and Supremacy, and make, subscribe, and audibly repeat the Declaration, (in this Act contained, commonly called, *The Test*, which see Page 11) which said Oaths and Declaration, shall be in this and every succeeding Parliament, solemnly and publickly made and subscribed, betwixt the Hours of nine in the Morning and four in the Afternoon, by every such Member of the House of Commons at the Table, in the Middle of the said House; and whilst a full House of Commons is there duly sitting, with their Speaker in his Chair; and that the same be done in the House, in such like Order or Method as the House is called over by.

If any Member of the House of Commons presumes to do any Thing contrair to this Act, every Member so offending, from thenceforth be deemed and adjudged to be a Popish Recusant, convict to all Intents and Purposes.

mon purposes whatsoever, and shall forfeit and  
 suffer as a Popish Recusant convict, and shall  
 be disabled to hold or execute any Office or  
 place of Profit or Trust, Civil or Military, in  
 the King's Realms of Great-Britain  
*Ireland*, or in any of his Majesty's Realms,  
 Lands, or Foreign Plantations, to the said  
 Realms belonging; and shall be disabled  
 from thenceforth, to sit or vote in any Par-  
 liament, or to sue or use any Action, Bill,  
 Complaint, or Information in Course of Law, or  
 prosecute any Suit in any Court of Equity,  
 to be Guardian of any Child, or Executor  
 Administrator of any Person, or capable of  
 Legacy, or Deed of Gift; and shall forfeit  
 every wilful Offence against this Act, the  
 sum of 500 Lib. to be recovered or received  
 by him or them that will sue for the same, and  
 be prosecute by any Action of Debt, Suit,  
 Bill or Plaintiff, or Information, in any of his  
 Majesty's Courts of *Westminster*, where no  
 Join, Protection or Wager of Law shall

It shall be lawful to and for the House of  
 Commons, as often as they shall see Occasi-  
 on, to order, or cause, all or any of the Mem-  
 bers of Parliament, openly in their House,  
 to take the said Oaths, and to make and sub-  
 subscribe the said Declaration, at such Times  
 and in such Manner as they shall appoint:  
 And

And if any Member or Members of the House of Commons shall, contrary to such Order made by their House, wilfully presume to sit therein, without taking the said Oaths, and making and subscribing the said Declaration, every such Member or Members of the House of Commons so presuming to sit, shall be adjudged, and is thereby declared to be, incapable and disabled in Law to all Intents and Purposes whatsoever, to sit in the said House of Commons, or give any Voice therein during that Parliament.

And in every Case, where any Member or Members of the House of Commons, shall by virtue of this Act, be disabled to sit or vote in the House of Commons; then, and in every such Case, without any further Conviction or other Proceedings against such Member or Members, the Place or Places for which they or either of them were elected, is thereby declared void, and a new Writ or Writs shall issue out of the High Court of Chancery, by Warrants from the Speaker of the House of Commons for the Time being, and by Order of the said House, for the Election of a new Member or Members to serve in the House of Commons, in the place or places of such Member or Members so disabled, to all Intents and purposes, as if such Member or Members were naturally dead, &c.

During

During the taking and subscribing the Oaths and Declaration, all other Proceedings in Parliament are to cease, and the Oath, Declaration and Subscription, with a Schedule of the Names of the persons taking and subscribing them, are ordered to be entered and filed in Parliament Rolls provided by the Clerk of the House, and each Member to pay only 12 Pence for each such Entry.

By Stat. 1. W. and M. Ch. 1. it is Enacted, that the Act made in the 30th Year of King Charles II. and all other Acts of Parliament, so much of the said Act or Acts only as concerns the taking the Oaths of Supremacy and Allegiance, or either of them in the said Acts respectively mentioned, by any Member of either House of Parliament, with relation to their sitting and voting there, are thereby repealed to all Intents and purposes, any thing in the said received Act or Acts to the contrary notwithstanding. And in all future Parliaments, the Oaths of Allegiance and Supremacy, with the Declaration made in the 30th Year of K. Charles II. (set down Pag. 5. and 17.) are ordered to be taken, made, subscribed and repeated, by every Member of either House, within the Time, and in the same Manner and Form, and under the Penalties and Disabilities, as the said Oaths of Allegiance and Supremacy, and the said Declaration, by the said Act of the 30th Year of King

King *Charles II.* are limited, ordained and appointed, to be taken, made, subscribed and repeated, and not at any other Time, or any other Manner, to enable them to sit and vote in Parliament any Thing in the said Acts, or Acts, or in any of them to the notwithstanding.

By Stat. 13. and 14. W. III. 6. it is Enacted, That no Peer shall vote, make his Prox or sit in the House during any Debate, unless such Peer take the Oath of Abjuration, and subscribe the same betwixt the Hours of Nine and Four in the Afternoon: Which Oath to be taken by every Peer, at the Table, when a full House is there, and the Speaker in place.

As also, it is Enacted, That none who shall be a Member of the House of Commons, shall vote or sit there, during a Debate in the said House, after their Speaker is chosen, until such Member shall, from Time to Time, take the said Oath, and subscribe the same in Manner following; that is to say, The said Oath shall be in every Parliament solemnly and publickly made and subscribed, between the Hours of Nine in the Morning, and Four in the Afternoon, by every such Member of the House of Commons, at the Table in the Middle of the said House, and whilst a full House of Com

d actions is there duly sitting, with their Speaker  
ed at his Chair.

If any Peer vote or make his Proxy, and if  
it any Member of the House of Commons shall  
d A assume to vote, not having taken the said  
ntraath, and subscribed the same as aforesaid,  
Enact all from thence be deemed and adjudged a  
Popish Recusant, convict to all Intents and  
, un purposes whatsoever ; and shall forfeit and  
, afer as a Popish Recusant convict, and shall  
f N disabled to hold or execute any Office or  
athce of Profit or Trust, Civil or Military,  
whi any of his Majesty's Realms of *Great-Bri-*  
in h or *Ireland*, or in any of his Majesty's  
ands, or foreign Plantations belonging to  
e w said Realms ; and shall be disabled from  
Concencforth to make Proxy, sit or vote in ei-  
g; aor House of Parliament, or to sue or use  
peal Action, Bill, Plaintiff or Information, in  
Tin course of Law, or to prosecute any Suit in  
oscri Court of Equity, or to be Guardian to  
is Child, or Executor or Administrator of  
Parl person, or capable of any Legacy or Deed  
Gift : And shall forfeit for every wilful  
in t fence against this Act, the Sum of 500 *Lib.*  
on, to be recovered and received by him or them,  
Court shall sue for the same ; and to be prose-  
of t ed by any Action of Debt, Suit, Bill,  
Court or Information, in any of his Majesty's  
Courts

Courts of Westminster, wherein no *Effor* The  
Protection, or Wager of Law shall ly.



## T I T L E VII.

### *Of Absence from Parliament.*

**E**Very Member of Parliament is obliged to give Suit and Presence at the Parliament, and to attend daily all the Diversities thereof, from the first Day of its down-sitting, to the last Day, and till it rise, except they be excused.

By *Act 52. Parl. 3. James I. 1425.* it was case a Statuted, That all Prelates, Earls, Barons, and Freeholders of the King, within the Realm, since they are holden to give their Presence to the King's Parliament and General Council, should from thenceforth be bound to compear in proper person, and not to be a Proctor, except the Proctor alledge a cause to prove a lawful Cause of Absence (*a*).

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(*a*) It seems, that before this Time, personal attendance at Parliaments was not required; no more than now it is at the King's Head-Courts in Shire, and that in both a Letter of Attorney admitted, not only to excuse Absence, but the Attorney might do, at the General-Council, every Thing competent to the Constituent; and that this Act, the Proctor's Power was restricted.

The Unlaw, or Pain of unexcused Absence from Parliament, before and in the Reign of King James I. was 10 L. Scots, (a very gteat sum at that Time); and this is gathered from the Titles of his Sixth, Seventh and Eighth Parliaments, Annis 1426, 1427, 1428, follow.

*Comparentibus omnibus illis i debuerunt & voluerunt commode interesse, sentibus quibusdam aliis, quorum quidem alii legitime excusati fuerunt, alii vero quasi per Diutumaciam se absentaverunt, quorum quisque judicabitur in amerciamento decem libra-*

By Act 34. Parl. II. James VI. Anno 1587.  
it case any Earl, Lord, or Baron of Parliament (b), Prelate or Burgh, being lawfully witherned, absent themselves from Parliament, without lawful and sufficient Excuse, admitted and allow'd by the Lords of the Articles, the pecunial Pain shall be modified, and ordain'd to be taken of the Absents, in Manner following: From every Earl 300 Lib. from every Lord 200 Lib. from every Prelate 100 Lib. From every Burgh 100 Merks.

Such as did not accompany the King's Majesty on Horseback decently, with Footmantles, from his Highness's Palace, to the

H Parlia-

(b) At this Time, there were no Dukes, Marquesses or Viscounts in Scotland.

Parliament-House, are by that Act ordained  
to be reputed for Absents, and to pay ac-  
cordingly.

For levying this Fine, Letters to poind and  
distrenzy the Lands and Goods of the Ab-  
sents are ordained to be directed, or to pa-  
the Fine within 10 Days, under the pain o  
Rebellion; and if they fail, of putting them  
to the Horn.

These Penalties were, by the Treasurer  
collected for the Sovereign's Use.

By *Act 7. Parl. 22. James VI. Anno 1617*  
this forecited Act is ratified, with this Ad-  
dition, That the Unlaw of Commissioners  
Barons, for Absence from Parliaments, is ap-  
pointed to be 100 *Lib.* (for that was omitted  
out of the preceeding Law) And it is fur-  
ther declared, That no Excuse for Absence  
from Parliament should be received or admit-  
ted, except the Licence was granted by the  
King, under his Note or Subscription, if he  
was in *Scotland* at the Time, and in his Ab-  
sence, by the High Commissioner of Parlia-  
ment; and in case of the said Commissioner  
Absence, by the Lord Chancellor and Lord  
of Secret-Council, to be produced judicially  
the First Day of the Fencing of each Parlia-  
ment, to the Clerk-Register or his De-  
putes.

By the same Act it is declared, That it  
should be lawful to any Duke, Marquess, Earl  
Viscount

ained Viscount, Lord or Prelate within Scotland, by absence being absent from Parliament, and lawfully excused, to send a sufficient Power, subscribed and attested with their Hands, to any one of that Abolished Estate, having place and Vote in Parliament, for who shall be admitted to Reason and Vote n or for the person absent, during the whole Diets then of Parliament.

The ancient Privilege of naming Proxies, which the whole Barons had, before the year 1425, by the above-cited Act, confirmed to the Nobility and Prelates, till the Union of the Two Kingdoms in the Year 1707, was gone into Disuse.

By an unprinted *Act*, Parl. 1. Sess. 2. Charles II. entitled, *Act concerning Members of Parliament who do not attend*, it is declared, That each Nobleman absent from the Parliament, shall be liable to the penalty of 200 lib. Scots; each Commissioner for a shire, to the Sum of 600 lib. Scots; and each Commissioner for a Burrow, to the Sum of 100 lib. Scots; and that without prejudice of what further Censure the Parliament shall think fit.

And by another unprinted *Act* in the same Session of Parliament, made for settling the Orders in the Parliament-House, it is appointed, That all Members of Parliament do precisely keep the Diets of Parliament, under the pains following, viz. Each Nobleman for

each Diet's Absence without Leave, 12 lib. Scots ; each Baron 6 lib. and each Burges 1 lib. and that they pay the just Half of the penalties for each Diet they come in *sero*, after the calling of the Rolls of Parliament.

By *Act 1. Parl. 1. Sess. 3. William and Mary*, dated *September 10th 1690*, these two Acts are ratified, and ordained to be put in Execution. And it is thereby further declared, That Members of Parliament being within the Kingdom, and not having a reasonable Excuse, who shall be absent upon the First Day of the Parliament, shall be reputed Absents from Parliaments, and liable to the penalties imposed on such : The Receiver General of the Crown-Rents and Casualties is appointed to receive the respective Penalties of the Absents from Parliaments, according to a List to be signed, and given by the Clerks.

The Clerks of the Session, as Deputies to the Clerk of Register in Parliament, are ordained to make *Sederunts* of each Diet of Parliament, and to mark these who are absent, that they, or any whom they appoint, may exact from Absents from particular *Sederunts*, the Penalties, conform to this and the foresaid. And they are allowed to apply the same to their own Use, as a Reward given to them for making the daily *Sederunts*.

This was the Law of *Scotland* before the Union ; but the Law of *South-Britain*, which will be the Rule in this Case of Absence from either Houses of Parliament, is as follows :

Every Lord Spiritual or Temporal, and every Knight, Citizen or Burgess, shall, upon summons, come to the Parliament, except he can reasonably and honestly excuse himself ; else he shall be amerced, &c. that is, respectively a Lord by the Lords, and one of the Commons by the Commons.

By Statute 5. Rich. II. Ch. 4. in the Year 82, the King doth will and command ; and is assented in the Parliament, by the Prelates, Lords and Commons, That all and singular Persons and Commonalties, which from thenceforth shall have the Summons of Parliament, shall come to the Parliaments in the manner they are bound to do, and have been accustomed within the Realm of *England*, of old times.

And if any Person of the same Realm, which from thenceforth shall have the said Summons, be Knight of the Shire, Citizen of City, Burgess of Burgh, or other singular Person or Commonality) do absent himself, and come not at the said Summons, (except he may reasonably and honestly excuse him to the Lord King) he shall be amerced, and otherwise punished, according as in old Times hath been used within the said Realm, in the said Case.

By Statute 6. Hen. VIII. Ch. 16. in the Year  
 1514, it is enacted, That from henceforth no  
 Knights (of Shires) Citizens, Burgeses and  
 Barons of Cinque-ports, nor any one of them  
 that shall be elected to come to any Parlia-  
 ment, do depart from the Parliament, nor ab-  
 sent himself till the Parliament be fully finish-  
 ed, ended or prorogued, except he or they so  
 departing, have Licence from the Speaker and  
 Commons in the said Parliament assembled  
 and the same Licence be entred of Record in  
 the Books of the Clerk to the Parliament, ap-  
 pointed for the Commons House, under the  
 pain of losing their Wages.

## TITLE VIII.

*Of the Fees of Members of Parliament, and  
 how they are assed and levied.*

**I**T being just that those who shall be chosen  
 Commissioners to Parliament, and who  
 shall accordingly attend his Majesty, and the  
 Kingdom's Service in Parliament, have Allow-  
 ance of their Expence \*; therefore by Act 10.  
 Parl. 7. James I. Anno 1607, it is statuted  
 That the Commissioners for Shires shall have  
 their Costs and Expences paid to them by the  
 Freeholders of the Shires whom they represent.

\* Act 35. Parl. Anno 1681.

Year and who formerly owed Compearance in Parliament, and that out of their Rents proportionably.

And by *Act 114. Parl. 11. James VI. 1587.* is decerned, That all Freeholders be taxed for the Expence of the Commissioners of the shires passing to Parliament ; and that the Lords of Council and Session shall yearly direct Letters at the Instance of the Commissioners, for conveening the Freeholders to make the Taxation of the Expence of the Commissioners ; and that for Payment thereof, when fixed, Letters of Horning and Pounding be directed upon a Charge of Six Days Warning.

But this Taxation was uncertain and undetermined, till by *Act 35. Parl. 1. Session 1. Charles II. Anno 1661.* the States of Parliament modified and appointed 5 lib. Scots of daily Allowance to every Commissioner, from any Shire, including the first and last Days of the Parliament, together with Eight Days for their coming, and as many for their Return, to the furthest of *Caithness and Sutherland*, and proportionally at nearer Distance : And that the whole Freeholders, Heritors and Liferenters, holding of the King and Prince, shall, accordingly to the Proportion of their Lands and Lents lying within the Shire, be liable and obliged in payment of the said Allowance, excepting Noblemen and their Vassals ; for payment whereof, all Execution by Horning,

Pounding and Quartering, as is used for payment of Excise, is appointed to pass; and the daily Allowance is to be accordingly, as the Time and Days of the Parliament shall be attested under the Hand of the Clerk Register. But this daily Allowance is only given for the Days that the Commissioners attended, and kept the Diets of Parliament; for by *Act 1. Parl. 1. Sess. 3. William and Mary, 1690*, the Clerks of the Session, as Deputies to the Clerk of Register in Parliament, are ordained to make *Sederunts* of each Diet of Parliament and to mark those who are absent; and the Clerk of Register is ordained to give to the Commissioners for Shires and Burghs (who require) Certificates of their Attendance in Parliament, for exacting from the Shires and Burghs which they represent, their Fees, conform to the said *Sederunt*.

And by *Act 21. Parl. 3. Charles II. in 1681*, it is statuted, That the whole Heritors, Life-renters and Wadsetters, within each Shire or Stewartry, shall contribute for the Charges of the Commissioners thereof, according to their Valuation, except those who hold of Noblemen, or are Proprietors of Lands belonging to Burghs-Royal in Burgage.

In South-Britain, the Wages and Expence of the Members of Parliament in the House of Commons, are assedged and levied by the Law following. By *Statute 12. Rich. II. 12. in the Year*

pay. Year 1389, the levying of the Expence of  
 the Knights coming to Parliament, is appointed to  
 be made as in time then past ; and if any Lord  
 or other have purchased Lands or other Pos-  
 sessions, that were wont to be contributary to  
 such Expences, they shall still continue to be  
 notwithstanding such Purchase.

The Fee of a Knight of any County hath,  
 one out of Mind, been 4 sh. *per diem*, as is  
 particularly exprest in many Records ; and the  
 fee of every Citizen and Burgess is 12 sh. *per*  
*diem*.

And by Statute 23. Henry VI. 2. in the Year  
 1455, the Sheriff in the next County-Court,  
 after he shall receive the Writ for assessing the  
 Wages of the Knights of Parliament, is appoint-  
 ed to make Proclamation, That the Coroners,  
 Chief Constables, Bailiffs, and all others (that  
 will) appear at the next County-Court, to  
 assess the same Wages, at which the Sheriff and  
 other Officers shall be present in proper Per-  
 son, in pain that every one that makes De-  
 fault shall forfeit 40 sh. and then the Sheriff  
 shall, in full County, assess every Hundred by  
 himself, and every Town in each Hundred by  
 himself, so as the Sum assessed upon all the  
 Hundreds, exceeds not the intire Charge of  
 the County, nor that assessed upon all the  
 Towns in each Hundred, exceed not the Sum  
 charged upon the Hundred in which they

The

The Sheriff is ordained to levy the said Assessments as speedily as may be, after they are assessed, and to deliver them to the Knight and that the same shall not be levied, but in Places where the same hath been formerly levied, and thereafter in every Writ for levying such Wages, the Statute 23. Henry VI. 10, to be insert.

If the Sheriff or other Officer levies more than is assessed, he forfeits 20 lib. to the Queen and 10 lib. to the Prosecutor; for Recovery of which 10 lib. the Prosecutor is to have a *Scire facias* (g): And if the Defendant is afterward convicted, the Prosecutor shall recover the 10 lib. to his own Use (over and above the said 20 lib.) and besides Treble Damages for Costs of Suit.

Justices of both Benches, Justices of Assizes, Goal Delivery and Peace, have Power to hear and determine those Abuses, as well as the Suit of the King, as for the Party.

The Stat. 35. Henry VIII. 2. Anno Dom. 1545 mentions, That whereas, Burghs and Boroughs in Parliament of England and Wales have used to have allowed them, viz. the Knights

(g) *Scire facias.*] is a Writ judicial, most commonly to call a Man to shew Cause to the Court, whence it issues, why Execution of a Judgment passed, should not be made out, &c,

aid Aights 4 sh. and the Burgettes 2 sh. a Day or  
 they are, during the Parliaments, and their rea-  
 knightable Time of coming to and returning from  
 but Parliament, together with their Costs of  
 erly levying its and other ordinary Fees and Charges;  
 before it is ordained, That the Sheriffs of  
 the twelve Shires in *Wales* and the County  
*Monmouth*, shall have power to levy the  
 Fees of the Inhabitants of the Shires  
 Counties, and shall pay them to the  
 Knights in two Months, after the saids Knights  
 shall have delivered unto them their Writs  
*solutione feodi Militis Parlamenti*, in pains to  
 forfeit 20 lib. to be recovered by Bill, Plaintiff, &c.  
 and to be divided betwixt the King and the  
 Prosecutors; and for every Month that such  
 default is made after the saids two Months,  
 lib. more to be levied, as aforesaid. The  
 Head Officers also of the Cities and Bur-  
 ghs in the saids twelve Shires and County,  
 all levy and pay their Burgesses Wages and  
 es within the like Time, after the Writs  
*solutione feodi Burgens Parlamenti* are deli-  
 vered unto them, upon the like pains to be  
 levied of the Goods and Cattels of such Head  
 officers.

The Justices of Peace in each Shire and  
 County, have power to Tax every City and  
 Urgh, in the several Counties where they  
 habit, respectively, towards the Wages of  
 the Burgesses within the Shire and Towns;  
 which

which Taxes shall be again rated upon the Inhabitants of each such City and Burgh, four or six discreet and substantial Burgeses there; and then levied and paid by the Head Officers unto the Burgesses of Parliament of the said Shire Towns, in Manner and Form aforesaid, and upon like pains.

My Lord chief Justice Coke, in the 4th Part of his *Institutes of the Laws of England*, concerning the Jurisdiction of Courts, says, That in the first Year of the Reign of Richard II. Anno 1377. the Commons petitioned in Parliament, That all Persons having Lay Fees might contribute to the Charge of the Knights and to all Tailages; and that the King answered, The Lords of the Realm will no longer lose their old Liberties. Also he observes there is a Writ in the Register, *De expensis militis non levandis ab hominibus de antiquo Dominio, nec ab nativis.* And that there are other Discharges.

By Stat. 6. Henry VIII. in the Year 1514, it is enacted, If any Knight, Citizen or Burgess depart from the Parliament, without the Licence of the Speaker and Commons in Parliament assembled, to be entred upon Record in the Book of the Clerk to the Parliament, he shall lose his Wages.

Any Lord of Parliament by Licence of the Sovereign upon just Cause to be absent, may make a Proxy to a Lord of Parliament; but

Knight

in the night, Citizen or Burgess of the House of Commons cannot make Proxy, because he is selected and trusted by Multitudes of People. Thus much, concerning the Fees and Wages of Members according to the Laws in South and North-Britain, may suffice, and at more especially at this Time, when the Commissioners for Shires at their Election, come in Use to renounce all Claims to Fees from the Freeholders; and when the Opportunity of doing Service to our Country is courted by our Patriots, and when those who are feasted by the Barons and others, look on that honour as a sufficient Reward in it self.

## T I T L E IX.

### *the Privilege belonging to Members of Parliament.*

**B**EFORE the Stat. 12. W. III. 3. A. D. 1701. The Privilege of Members was indeterminate, lying much in the Custom and Will of either House of Parliament, only known by them.

The said Act is Entitled, *An Act for preventing any Inconveniences, that may happen by Pri-*

*Privilege of Parliament*; and contains five Paragraphs. The Sense of the First is,

I. That any Person may prosecute a Peer of this Realm, or Lord of Parliament, or any of the Knights, Citizens and Burgesses of the House of Commons; for the Time being, or their, or any of their menial other Servants, or any other Person intituled to the Privilege of Parliament, in any of the Courts of Record at *Westminster*, or His Court of *Chancery*, or Court of *Exchequer*, the Dutchy Court of *Lancaster*, or in the Court of *Admiralty*, and in all Causes matrimonial and Testamentary in the Court of the *Arches*, the prerogative Courts of *Canterbury* and *York*, and the *Delegates*, and in the Courts of Appeal, at any Time from and immediately after the Dissolution or Prorogation of any Parliament, until a new Parliament shall meet, or the same be reassembled, and from, and immediately after any Adjournment of both Houses of Parliament, for above the Space of four Days, until both Houses shall meet or assemble; and that the said Courts respectively, shall, and may after such Dissolution, Prorogation or Adjournment, proceed to execute Judgment, and to make final Orders, Decrees and Sentences, and award Execution thereupon, in any Privilege of Parliament to the contrary notwithstanding.

II. The second Paragraph of this Act contains a *Proviso* against the subjecting the Person of any Knight, Citizens and Burghesses of the House of Commons, or any other Person entitled to the Privilege of Parliament, to be arrested during the Time of Privilege; nevertheless allowing Liberty to any Person or Persons, having Cause of Action or Complaint against any Peer of this Realm, or Lord of Parliament, such Person or Persons, after Dissolution, Prorogation or Adjournment, aforesaid, or before any Sessions of Parliament, or Meeting of both Houses, as aforesaid, shall and may have such Process of the Courts of *King's Bench*, *Common Pleas* and *Exchequer*, against such Peer or Lord of Parliament, as he or they might have against him out of the Time of Privilege; if any Person or Persons, having Cause of Action against any of the said Knights, Citizens or Burghesses, or any other Person intitled to the Privilege of Parliament, after any Dissolution, Prorogation, or such Adjournment, aforesaid, or before any Sessions of Parliament, or Meeting of both Houses, as aforesaid, such Person or Persons, shall, and may execute such Knight, Citizen or Burghess, or other Person intitled to the Privilege of Parliament, in the Courts of *King's Bench*, *Common Pleas* or *Exchequer*, by Original Bill, and

Summons, Attachment, and *Distress Infinite* thereupon, to be issued out of any of the said Courts of Record, which the said respective Courts are empowered to issue against the Plaintiff or any of them, until he or they shall enter common Appearance, or file common Bail for the Plaintiff's Action, according to the Course of each respective Court; and any Person or Persons having Cause of Suit or Complaint may, in the Times aforesaid, exhibite any Bill or Complaint against any Peer of this Realm or Lord of Parliament, or against any of the said Knights, Citizens or Burgesses, or other Person intitled to the Privilege of Parliament in the High Court of *Chancery*, Court of *Exchequer*, or Dutchy Court of *Lancaster*, and may proceed thereupon by Letter

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(a) *Distress infinite*] Distress signifies a Compulsion certain and real Actions, whereby to bring a Party to appear in Court, or to pay a Debt of Duty denied, the Effect whereof, most commonly, is to distrain the Party distrained, to Replevy the Distress; and to take his Action of Trespass against the Distrainer, or else to compound neighbourly with him for the Debt or Duty, for which the Distress was made: hath many Divisions one whereof is, unto Finite and Infinite; Distress Finite, is that which is limited by Law, how often it shall be made to bring the Party to Trial of the Action: Distress Infinite, is without Limitation, until the Party come as against a Jury, that refuseth to appear super Certificatione Affise, whereupon Process is *venire facias habens corpora*, and Distress infinite.

(*Subpœna, (a.)*) as is usual, and upon leaving Copy of the Bill with the Defendant, or at his House or Lodging, or last Place of Abode, may proceed thereon ; and for Want of an Appearance or Answer, or for Nonperformance of Bail by Order or Decree, or for Breach thereof, may sequester the real and personal Estate of the Party, as is used and practised, where the defendant is a Peer of this Realm ; but shall not arrest or imprison the Body of any of the Knights, Citizens and Burgeesses, or other privileged Person, during the Continuance of privilege of Parliament.

III. That in case where any Plaintiff shall, by reason or occasion of Privilege of Parliament, be stayed or prevented from prosecuting any Suit by him commenced, such Plaintiff

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(a) *Subpœna*] Is a Writ, whereby all Persons under the Degree of Peerage, are called into *Chancery*, in such Case only, where the Common Law fails, and hath made no Provision, so as the Party, who Equity hath Wrong, can have no ordinary Ready by the Rules and Course of the Common Law. But Peers of the Realm in such Cases, are served by the Lord Chancellor's, or Lord Keeper's Letters, giving Notice of the Suit intended against them, and requiring them to appear. There is also a *Subpœna ad testificandum*, for the summoning of witnesses, as well in *Chancery*, as other Courts. There is also a *Subpœna* in the *Exchequer*, as well in the Court of *Equity* there, as in the Court of Pleas ; and these Names proceed from the Words in the Writ, which charge the Party summon'd to appear at the Day and Place assign'd, *Sub pœna Centum Librarum*.

tiff shall not be barred by any Statute of Limitation, or non-suited, dismissed, nor his Suit discontinued for want of Prosecution of the Suit by him begun; but shall, from Time to Time, upon the Rising of the Parliament, be at Liberty to proceed to Judgment and Execution.

IV. That no Action, Suit, Process, Order, Judgment, Decree, or Proceeding in Law or Equity against the King's original and immediate Debtor, for the Recovery or obtaining of any Debt or Duty originally and immediately due or payable unto his Majesty, his Heirs or Successors, or against any Accomptant, or person answerable to render an Account unto his Majesty, his Heirs or Successors, for any part or Branch of his or the Revenues, or other original and immediate Debt or Duty, or the Execution of any such Process, Order, Judgment, Decree or Proceedings, shall be impeached, stayed or delayed, by or under the Colour or Pretence of any Privilege of Parliament: Yet so nevertheless, that the person or persons of any such Debtor, Accomptant, or person answerable or liable to Account, being a Peer of the Realm, or Lord of Parliament, shall not be liable to be arrested or imprisoned, by or upon any such Suit, Order, Judgment, Decree, Process or Proceedings, or being a Member of the House of Commons, shall not, during

of Law Continuance of the Privilege of Parliament, be arrested or imprisoned, by or upon any such Order, Judgment, Decree, Process or Proceedings.

V. The last Paragraph contains a *Proviso*, that neither this Act, nor any Thing therein contain'd, shall extend to give any Jurisdiction, Power or Authority, to any Court or Law to hold Plea in any real or mixt Action, in any other manner than such Court might obtain have done before the making this Act.

The Lords of Session have (*a*) found and recerned, That a Member of Parliament is not oblig'd, while the Parliament is sitting, to notice a Process call'd against him, nor at any time, on calling the Summons to seek a Sight of it, or have an Advocate to appear and answer for him.

And in another Case (*b*), The Lords listed Process against a Member, tho' he was not attending, in respect the Parliament was sitting and he represented, that he was bound never go and attend, and claim'd his Privilege.

Yea, tho' a Member omit to claim Privilege, and *in initio litis* list himself, by pronouncing Defences; yet any Time he is allowed

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(*a*) In the Case of the Laird and Lady Greenock, June 1709. (*b*) 15. November 1709. Livingston against the Laird of Grant.

low'd (*c*) to claim his Privilege, and then upon propound to stop Process.

During Privilege, he cannot be charged with Horning, nor can Sentence be pronounced against him, his Person or Goods.

Generally the Privilege of Parliament doth hold, except in the Cases of Treason, Felony, and the Peace.

Nevertheless, the Lords (*d*) did not sustain Privilege to hinder Circumduction of the Term for not reporting a Commission, because the Advocates for the Member had undertaken it; however, they superseded Extract till a Time out of Privilege.

Any transgressing against the Privilege Parliament allow'd to Members, is, by either of the Houses, with respect to their several Members, punished according to the Heinousness of the Trespass, at the Will and Arbitriment of the respective House.

(*c*) Captain Bruce against Mr. William Dalrymple.

(*d*) 17. February 1708, Grant of That-Ilk against Earl of Sutherland.